

VIDEO DEPOSITION OF GARY CHILDRESS - 11/28/2007

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1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN FRANCISCO

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5 NORMA SCHLESINGER,

6 Plaintiff,

7 vs.

8 AMERICAN BILTRITE, INC., et al.,

9 Defendants.

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No. CGC-07-274200

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14 Video Deposition of

15 GARY CHILDRESS

16 November 28, 2007

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20 Reported by:

21 James Matthews, CSR 7916

22
23 TOOKER & ANTZ
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2	<p>1 I N D E X</p> <p>2 ---o0o---</p> <p>3</p> <p>4 Deposition of GARY CHILDRESS Page</p> <p>5 Examination by Mr. Hames 4</p> <p>6</p> <p>7 Plaintiff's Exhibits (GARY CHILDRESS) Ident</p> <p>8 1 Plaintiff's Notice of Deposition 5</p> <p>9 2 Declaration of Gary Childress 43</p> <p>10 3 97 pages of copies of checks 52</p> <p>11 4 10-8-76 letter from Atlanta Testing & Engineering 89</p> <p>12 to American Vermiculite Corporation</p> <p>13 5 9-2-81 letter from Fronk to W.R. Grace & Co. 90</p> <p>14 6 9-25-81 letter from O'Donnell to Fronk and attached 91</p> <p>15 Material Safety Data Sheet</p> <p>16 7 9-1-83 memo from Chase to Vukovich 92</p> <p>17 8 J.P. Austin Associates, Inc. Material Safety Data 92</p> <p>18 sheet</p> <p>19 9 Color copy of photo of a box of Orton Standard 120</p> <p>20 Pyrometric Cones</p> <p>21</p> <p>22 Defendant's Exhibits (Childress)</p> <p>23 A Objections to Plaintiff's Notice of Videotaped 5</p> <p>24 Deposition</p> <p>25</p>	4
3	<p>1 Be it remembered that, pursuant to notice of taking</p> <p>2 deposition, and on Wednesday, the 28th day of November, 2007</p> <p>3 commencing at the hour of 10:28 o'clock a.m. thereof, at</p> <p>4 TOOKER & ANTZ COURT REPORTING AND VIDEO SERVICES, 350 Sansome</p> <p>5 Street, Suite 700, San Francisco, California before me, James</p> <p>6 Matthews, duly authorized to administer oaths pursuant to</p> <p>7 section 2093(b) of the California Code of Civil Procedure,</p> <p>8 personally appeared</p> <p>9 GARY CHILDRESS</p> <p>10 called as a witness by the plaintiff; and the said witness,</p> <p>11 having stated that he would testify the truth, the whole</p> <p>12 truth, and nothing but the truth, was thereupon examined and</p> <p>13 testified as hereinafter set forth.</p> <p>14 LAW OFFICES OF LEVIN, SIMES, KAISER & GORNICK, 44</p> <p>15 Montgomery Street, 36th Floor, San Francisco, California</p> <p>16 94104, represented by SCOTT HAMES, Esq., appeared as counsel</p> <p>17 on behalf of the plaintiff.</p> <p>18 LAW OFFICES OF JACKSON & WALLACE, 55 Francisco</p> <p>19 Street, 6th Floor, San Francisco, California 94133,</p> <p>20 represented by CATHERINE E. GOLDEN, Esq. and DANIEL D.</p> <p>21 O'SHEA, Esq., appeared as counsel on behalf of the defendant</p> <p>22 Edward Orton Ceramic Foundation.</p> <p>23 ALSO PRESENT: Dan DeFrank, videographer.</p> <p>24 --o0o--</p> <p>25</p>	5
1	<p>1 GARY CHILDRESS</p> <p>2 having first stated that he would testify the truth, the</p> <p>3 whole truth, and nothing but the truth, testified as follows:</p> <p>4 EXAMINATION BY MR. HAMES</p> <p>5 THE VIDEOGRAPHER: Ladies and gentlemen, we are on</p> <p>6 video record on November 28th, 2007. The time is 10:28. I'm</p> <p>7 Dan DeFrank, a Notary Public for the County of San Francisco</p> <p>8 representing Tooker & Antz, 350 Sansome Street, Suite 700,</p> <p>9 San Francisco, California 94106. The phone number is</p> <p>10 415-392-0650.</p> <p>11 This is the beginning of Tape 1 of Volume I in the</p> <p>12 case of Norma Schlesinger versus American Biltrite, Inc. et</p> <p>13 al. in the Superior Court of California in and for the County</p> <p>14 of San Francisco, case number is CGC-07-274200 for the</p> <p>15 deposition of Gary Childress. We are located at Tooker &</p> <p>16 Antz, 350 Sansome Street, San Francisco. Deposition was</p> <p>17 noticed by attorneys for plaintiff and videotape is produced</p> <p>18 by the same.</p> <p>19 Counsel, would you please identify yourselves and</p> <p>20 your clients?</p> <p>21 MR. HAMES: My name is Scott Hames. I'm from the</p> <p>22 law firm of Levin, Simes, Kaiser & Gornick and I represent</p> <p>23 the plaintiff in this action.</p> <p>24 MS. GOLDEN: Yes, Catherine Golden from Jackson &</p> <p>25 Wallace representing Edward Orton Ceramics Foundation.</p>	1
2	<p>1 THE VIDEOGRAPHER: Court reporter may swear in the</p> <p>2 witness.</p> <p>3 MS. GOLDEN: We have one more attorney here.</p> <p>4 MR. O'SHEA: Daniel O'Shea, Jackson & Wallace on</p> <p>5 behalf of Orton as well.</p> <p>6 (Witness sworn.)</p> <p>7 MR. HAMES: Q. And just for the record, we</p> <p>8 premarked -- did you use -- so Exhibit number 1 is</p> <p>9 Plaintiff's Notice of this deposition.</p> <p>10 (Whereupon Plaintiff's Exhibit 1 was marked for</p> <p>11 identification.)</p> <p>12 MR. HAMES: Did you want to mark some stuff as</p> <p>13 well, Catherine?</p> <p>14 MS. GOLDEN: I would like to mark as Defendant's</p> <p>15 first exhibit our objections to the depo notice and the</p> <p>16 document request.</p> <p>17 (Whereupon Defendant's Exhibit A was marked for</p> <p>18 identification.)</p> <p>19 MR. HAMES: Q. Good morning, sir. Again, my name</p> <p>20 is Scott Hames. I represent the plaintiff in this case. Can</p> <p>21 you please state your full name for the record?</p> <p>22 A. Gary Childress.</p> <p>23 Q. Okay. And how do you spell your last name?</p> <p>24 A. C-h-i-l-d-r-e-s-s.</p> <p>25 Q. Okay. And I'm just going to start off by going</p>	2

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1 through some of your background and then we'll talk about the	1 A. I understand.
2 company that you work for in some detail.	2 Q. Also I don't want you to speculate or guess about
3 So how old are you, sir?	3 anything. Okay? Do you know what the difference between
4 A. 59.	4 speculation is and an estimate and a guess?
5 Q. What's your date of birth?	5 A. Yes.
6 A. December 20th, 1947.	6 Q. Okay. Good. Then I'm not going to go through the
7 Q. Okay. And where do you currently live?	7 usual definitions of those words, okay? But it's okay for
8 A. Do you want my full address?	8 you to provide an estimate if you don't have a precise date
9 Q. You can just tell me the city, that's fine.	9 or something like that, okay?
10 A. Westerville, Ohio.	10 A. Okay.
11 Q. Thanks for coming out.	11 Q. All right. So the prior deposition that you gave
12 A. Well, the weather's nice here.	12 was in 2001. Was that -- did that have anything to do with
13 Q. And you said it was Westerville?	13 the Edward Orton Foundation Company?
14 A. Yes.	14 A. No.
15 Q. Have you ever had your deposition taken before?	15 Q. Okay. What was that case involved, just generally?
16 A. Yes, I have.	16 A. It was -- my employer at that time was the Hecla
17 Q. How many times?	17 Mining Company, and it had to do with failure of a -- another
18 A. Once.	18 party to close one of the acquisition of one of Hecla's
19 Q. Do you know when that was?	19 assets that was sold.
20 A. It was in -- yeah, 2001.	20 Q. Okay. It wasn't a personal injury case?
21 Q. Okay. Well, I'm sure your attorney's advised you	21 A. No.
22 on the rules of deposition and the procedure, but let me just	22 Q. It didn't have anything to do with asbestos?
23 mention a couple things.	23 A. Oh, no.
24 You understand that the oath that you just took has	24 Q. Okay. All right. And let me just ask you, did you
25 the same force and effect as it would if you were testifying	25 go to high school?
7	9
1 in a court of law?	1 A. Yes, I did.
2 A. I do.	2 Q. Where did you go to high school?
3 Q. And that it carries a penalty of perjury?	3 A. Greenville, South Carolina.
4 A. I do.	4 Q. And what year did you graduate?
5 Q. In deposition -- people have a tendency to	5 A. 1965.
6 interrupt each other sometimes in normal conversation, but in	6 Q. Did you go to college of a that?
7 depositions it's really important that only one of us talk at	7 A. I did.
8 a time. So I'll try not to interrupt you if you try not to	8 Q. Where did you go?
9 interrupt me. All right?	9 A. Clemson University.
10 A. Fair.	10 Q. Where is that?
11 Q. It's going to happen, okay? So if I interrupt you	11 A. Clemson, South Carolina.
12 just let me know so you can complete your answer, okay?	12 Q. Okay. Never heard of it. Sorry. And what years
13 A. Okay.	13 did you attend Clemson?
14 Q. Also I'm going to assume that you understand all my	14 A. 1965 through 1969.
15 questions unless you tell me otherwise.	15 Q. And did you receive any degrees from that
16 A. Okay.	16 university?
17 Q. There aren't any classes in law school or otherwise	17 A. I did.
18 that teach people to ask questions that make sense, so if you	18 Q. In what?
19 don't understand something that I ask you let me know, okay?	19 A. Ceramic engineering.
20 A. Okay.	20 Q. Okay. Did you have any other formal education
21 Q. You're doing a great job so far by answering	21 after Clemson?
22 audibly. Nods of the head, shakes of the head, uh-huhs and	22 A. No.
23 uh-uhs don't transcribe on the transcript, so you need to	23 Q. Okay. When you attended Clemson was anything
24 answer with a yes or a no or whatever answer you might	24 related to asbestos ever discussed in any of your classes?
25 provide.	25 That you recall?

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<p style="text-align: right;">10</p> <p>1 A. Not to my recollection, no.</p> <p>2 Q. Okay. All right. And then did you enter the work</p> <p>3 force?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Where did you first start working after</p> <p>6 college?</p> <p>7 A. Drakenfeld. D-r-a-k-e-n-f-e-l-d.</p> <p>8 Q. And what sort of business is Drakenfeld in?</p> <p>9 A. They manufactured ceramic pigments. Inorganic</p> <p>10 pigments for colorants.</p> <p>11 Q. Okay. And what was your position there?</p> <p>12 A. I was a process engineer.</p> <p>13 Q. Just briefly what were your job duties for</p> <p>14 Drakenfeld?</p> <p>15 A. Primarily designing processes. The firing of the</p> <p>16 pigments. That -- and the handling, material handling</p> <p>17 aspects. Primarily.</p> <p>18 Q. Okay. In what years did you work for Drakenfeld?</p> <p>19 A. 1969 through 1971.</p> <p>20 Q. When you were working at Drakenfeld did you have</p> <p>21 any contact whatsoever with any of your current company,</p> <p>22 Orton Ceramic -- or Edward Orton, Junior Ceramic</p> <p>23 Foundation -- I'm just going to refer to it as Orton, okay?</p> <p>24 A. Uh-huh.</p> <p>25 Q. With any of their products such as the pyrometric</p>	<p style="text-align: right;">12</p> <p>1 A. No.</p> <p>2 Q. Okay. All right. Where did you work after</p> <p>3 Vesuvius?</p> <p>4 A. Houston Ceramics.</p> <p>5 Q. And what years did you work for them?</p> <p>6 A. 1972 through 1975.</p> <p>7 Q. And what did you do for them?</p> <p>8 A. I was a ceramic engineer for the plant.</p> <p>9 Q. And what sort of company was Houston Ceramics when</p> <p>10 you were working for them?</p> <p>11 A. They made ceramic tile.</p> <p>12 Q. Okay. And what were your job duties?</p> <p>13 A. I was responsible for all ceramic processing.</p> <p>14 Q. Okay. Do you know if any asbestos was used when</p> <p>15 you were working for Houston Ceramics?</p> <p>16 A. To the best of my knowledge, no.</p> <p>17 Q. Okay. Where was the next company you worked?</p> <p>18 A. Eljer Plumbing Ware.</p> <p>19 Q. Can you spell that one for me?</p> <p>20 A. E-l-j-e-r.</p> <p>21 Q. Plumbing?</p> <p>22 A. Uh-huh. Plumbing ware.</p> <p>23 Q. And what sort of company was that?</p> <p>24 A. Made bathroom fixtures, toilets, sinks, lavatories.</p> <p>25 Q. And what years did you work for them?</p>
<p style="text-align: right;">11</p> <p>1 cones that are at issue in this case?</p> <p>2 A. No.</p> <p>3 Q. Okay. Where did you work after Drakenfeld?</p> <p>4 A. I worked for Vesuvius Crucible.</p> <p>5 Q. Vesuvius?</p> <p>6 A. Like the mountain.</p> <p>7 Q. And what did you do for them?</p> <p>8 A. Sales.</p> <p>9 Q. What sort of business were they in?</p> <p>10 A. Refractories for the steel industry.</p> <p>11 Q. What do you mean by refractories?</p> <p>12 A. It's the -- the heat containment material, high</p> <p>13 temperature bricks that line furnaces, ladles, things like</p> <p>14 that.</p> <p>15 Q. Was Vesuvius manufacturing those?</p> <p>16 A. Yes, they were.</p> <p>17 Q. And you were a salesman for them?</p> <p>18 A. That's correct.</p> <p>19 Q. Can you tell me the years that you worked for them?</p> <p>20 A. 1971 through 72.</p> <p>21 Q. Was any asbestos used when you were working for</p> <p>22 Vesuvius that you know of?</p> <p>23 A. Not that I'm aware of.</p> <p>24 Q. Okay. Did you learn anything about asbestos when</p> <p>25 you were working for them?</p>	<p style="text-align: right;">13</p> <p>1 A. 1975 through 1979.</p> <p>2 Q. And what did you do for them?</p> <p>3 A. I was chief ceramic engineer.</p> <p>4 Q. So what were your job duties as the --</p> <p>5 A. I was responsible for all glaze production, body</p> <p>6 production, and the firing process.</p> <p>7 Q. Okay. Did you use any of the Orton pyrometric</p> <p>8 cones that are at issue in this case when you were working</p> <p>9 for Eljer?</p> <p>10 A. Yes, I did.</p> <p>11 Q. Was that your -- the first time that you came into</p> <p>12 contact with their product?</p> <p>13 A. Yes, it was.</p> <p>14 Q. Okay. Where did you work after Eljer?</p> <p>15 A. Ferro, F-e-r-r-o Corporation.</p> <p>16 Q. And what years did you work for Ferro?</p> <p>17 A. 1979 to 1983.</p> <p>18 Q. And what did you do for them?</p> <p>19 A. I was a salesman.</p> <p>20 Q. And what sort of company was that?</p> <p>21 A. They also made ceramic pigments and Frits.</p> <p>22 F-r-i-t-s. Frit.</p> <p>23 Q. What is a frit?</p> <p>24 A. It's basically the materials that are used to make</p> <p>25 a glaze -- ceramic glaze that are melted into a form of a</p>

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<p style="text-align: right;">14</p> <p>1 glass and then ground into a powder.</p> <p>2 Q. Okay. Thank you. Did you use any of the Orton</p> <p>3 pyrometric cones there?</p> <p>4 A. I wasn't into -- I actually worked out of my home.</p> <p>5 Q. Okay. So you didn't -- just so the record's clear,</p> <p>6 you didn't?</p> <p>7 A. I did not.</p> <p>8 Q. Okay. Okay. Where did you work after Ferro?</p> <p>9 A. ECC America. ECC is English China clay.</p> <p>10 Q. And when did you work for ECC?</p> <p>11 A. 1983 through 1986.</p> <p>12 Q. You're doing a great job with your prior jobs, by</p> <p>13 the way, with the dates and stuff.</p> <p>14 Okay. And what sort of company was ECC?</p> <p>15 A. We mined industrial minerals, kaolin, talc, and</p> <p>16 ball clay for the ceramic industry primarily.</p> <p>17 Q. And what was your position there?</p> <p>18 A. I was a marketing manager.</p> <p>19 Q. When you were working for ECC did issues pertaining</p> <p>20 to asbestos ever arise?</p> <p>21 A. No.</p> <p>22 Q. Do you recall if there was ever a concern about</p> <p>23 asbestos in any of the materials that your company was</p> <p>24 mining?</p> <p>25 MS. GOLDEN: I'm going to object as vague, over</p>	<p style="text-align: right;">16</p> <p>1 MR. HAMES: All right, I understand your objection.</p> <p>2 I'll just withdraw the question, okay?</p> <p>3 Q. So let's just continue with your employment history</p> <p>4 all right? For ECC America you worked there until 1986.</p> <p>5 Where did you work after that?</p> <p>6 A. Kentucky Tennessee Clay Company.</p> <p>7 Q. And what sort of company was that?</p> <p>8 A. We also mined industrial minerals. Ball</p> <p>9 clay. Feldspar.</p> <p>10 Q. And when did you work for them?</p> <p>11 A. 1986 to 1994.</p> <p>12 Q. And what was your position?</p> <p>13 A. President.</p> <p>14 Q. Okay. Where did you work after that?</p> <p>15 A. Actually, it was for the parent company that owned</p> <p>16 KT Clay. Hecla Mining Company. H-e-c-l-a.</p> <p>17 Q. Okay. And when did you start working for Hecla</p> <p>18 Mining Company?</p> <p>19 A. In '94.</p> <p>20 Q. Until when?</p> <p>21 A. 2001.</p> <p>22 Q. Okay. And then where did you work in 2001?</p> <p>23 A. I began working at the Orton Foundation.</p> <p>24 Q. And you're still working there, obviously.</p> <p>25 A. Yeah. As far as I know.</p>
<p style="text-align: right;">15</p> <p>1 broad and outside the scope of this deposition.</p> <p>2 MR. HAMES: I'm basically just asking because I'm</p> <p>3 trying to get your knowledge of -- of what asbestos is and</p> <p>4 when you first heard about it.</p> <p>5 Q. So let me just ask that question instead, okay? At</p> <p>6 any time have you ever heard that asbestos can be harmful to</p> <p>7 people?</p> <p>8 MS. GOLDEN: Okay, I'm going to object. This calls</p> <p>9 for speculation. It has nothing to do with this case nor</p> <p>10 Orton Ceramics Foundation which is the reason that he's here</p> <p>11 is on behalf of the company.</p> <p>12 MR. HAMES: I'm just asking just for your</p> <p>13 background, really.</p> <p>14 MS. GOLDEN: I'm going to object.</p> <p>15 MR. HAMES: Okay.</p> <p>16 MS. GOLDEN: I don't understand the relevance of</p> <p>17 what his knowledge is.</p> <p>18 MR. HAMES: Are you going to instruct him not to</p> <p>19 answer?</p> <p>20 MS. GOLDEN: His personal -- just hear me out. I</p> <p>21 need to know what -- how his personal knowledge has anything</p> <p>22 to do with this case, and what Orton knew or didn't know.</p> <p>23 MR. HAMES: Okay.</p> <p>24 MS. GOLDEN: Because he didn't even come to Orton</p> <p>25 until 2001.</p>	<p style="text-align: right;">17</p> <p>1 Q. All right. As far as you know. As of this</p> <p>2 morning. Okay. So when you first started working for Orton,</p> <p>3 what was your first position there?</p> <p>4 A. General manager.</p> <p>5 Q. And what were your job duties?</p> <p>6 A. Complete P&L responsibility for the facility.</p> <p>7 Q. Okay. And where is that facility located?</p> <p>8 A. Westerville, Ohio.</p> <p>9 Q. And what sort of company is Orton? What do they</p> <p>10 manufacture?</p> <p>11 A. We manufacture pyrometric cones. Thermal</p> <p>12 analytical instruments. And electronic temperature</p> <p>13 controllers.</p> <p>14 Q. Okay. And you understand that the purpose of your</p> <p>15 deposition today, you're being produced as the person most</p> <p>16 knowledgeable and the custodian of records for Orton,</p> <p>17 correct?</p> <p>18 MS. GOLDEN: He is not the custodian of records,</p> <p>19 but we have brought you the records that we have, but he can</p> <p>20 tell you about -- you know, generally retention policy, that</p> <p>21 sort of thing.</p> <p>22 MR. HAMES: And will you stipulate that those are</p> <p>23 authentic and business records?</p> <p>24 MS. GOLDEN: Yes.</p> <p>25 MR. HAMES: And we can use them at trial?</p>

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<p style="text-align: right;">18</p> <p>1 MS. GOLDEN: Yes, absolutely.</p> <p>2 MR. HAMES: Thank you. And we're going to mark</p> <p>3 everything, and we're going to go through it briefly --</p> <p>4 Q. So you understand that you're being produced as the</p> <p>5 person most knowledgeable for Orton?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. How long did you work as the general manager</p> <p>8 for Orton in that position?</p> <p>9 A. That's still my job.</p> <p>10 Q. Okay. Can you elaborate on what your job duties</p> <p>11 are?</p> <p>12 A. I'm responsible for the total operations. I report</p> <p>13 to the board of trustees.</p> <p>14 Q. Okay Where is Orton's headquarters?</p> <p>15 A. Westerville, Ohio.</p> <p>16 Q. Okay. Can you tell me the actual address?</p> <p>17 A. 6991 Old 3C, the numeral 3, the number 3C</p> <p>18 Highway. Westerville, Ohio.</p> <p>19 Q. Okay, and do you know how long they've been at that</p> <p>20 address?</p> <p>21 A. They moved there around 1980. 1981. That time</p> <p>22 frame.</p> <p>23 Q. Do you know where they were before that?</p> <p>24 A. Yes. They were at Summit Street, and that's in</p> <p>25 Columbus.</p>	<p style="text-align: right;">20</p> <p>1 A. Okay.</p> <p>2 Q. I pulled some information off the website. I'm not</p> <p>3 going to mark what I have, I'm just going to ask you some</p> <p>4 questions about it.</p> <p>5 A. Okay.</p> <p>6 Q. Do you know when the -- the full name of the</p> <p>7 company is the Edward J. Orton Junior Ceramic Foundation; is</p> <p>8 that right?</p> <p>9 A. Well, it's the Edward Orton Junior Ceramic</p> <p>10 Foundation.</p> <p>11 Q. Okay. And do you know when they first went into</p> <p>12 business?</p> <p>13 A. The year?</p> <p>14 MS. GOLDEN: You mean when the foundation was</p> <p>15 established? It's a nonprofit.</p> <p>16 MR. HAMES: It's a nonprofit, okay.</p> <p>17 Q. Do you know when Mr. Orton -- you said he preferred</p> <p>18 to be referred to as General?</p> <p>19 MS. GOLDEN: General.</p> <p>20 MR. HAMES: Q. Was he actually a general?</p> <p>21 MS. GOLDEN: He was.</p> <p>22 THE WITNESS: Yes.</p> <p>23 MR. HAMES: Q. And do you know when he first</p> <p>24 started make pyrometric cones?</p> <p>25 A. In 1986.</p>
<p style="text-align: right;">19</p> <p>1 Q. Do you know how long they were at Summit Street?</p> <p>2 A. No, not exactly.</p> <p>3 Q. Do you know if they've had any other addresses?</p> <p>4 A. The only thing I know is that they actually started</p> <p>5 making the cones, General Orton, as he liked to be called, in</p> <p>6 the basement at Ohio State University.</p> <p>7 (Court reporter asks for clarification.)</p> <p>8 MS. GOLDEN: He said General Orton. That's what he</p> <p>9 preferred to be called.</p> <p>10 MR. HAMES: Q. Let me just mention something. When</p> <p>11 the court reporter asks you a question he's just asking to</p> <p>12 repeat exactly what you said. He just didn't hear the words</p> <p>13 you said.</p> <p>14 A. Okay.</p> <p>15 MS. GOLDEN: Yeah.</p> <p>16 MR. HAMES: Q. You don't need to elaborate. He's</p> <p>17 not asking you another question. He just wants you to repeat</p> <p>18 exactly what you said.</p> <p>19 So they started making them in the basement at Ohio</p> <p>20 State.</p> <p>21 A. Um-hum.</p> <p>22 Q. Is that a yes?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Do you know -- let's talk about the</p> <p>25 background of the company a little bit.</p>	<p style="text-align: right;">21</p> <p>1 Q. Okay. And can you give me a description of what</p> <p>2 pyrometric cones are, please?</p> <p>3 A. It's a mixture of ceramic materials that are</p> <p>4 blended so that they deform at different temperatures.</p> <p>5 Q. Okay.</p> <p>6 A. So they measure a combination of temperature and</p> <p>7 time which we refer to as heat work.</p> <p>8 Q. Okay. And the mixture that they're actually made</p> <p>9 of, that's just clay?</p> <p>10 A. Clay and feldspar, primarily.</p> <p>11 Q. Okay.</p> <p>12 A. In varying ratios.</p> <p>13 Q. Okay. And they started making -- or General Orton</p> <p>14 started making them I think you said in 17 -- or rather in</p> <p>15 18 --</p> <p>16 A. 1896.</p> <p>17 Q. 1896?</p> <p>18 A. Yeah.</p> <p>19 Q. Okay. Okay. And they continue to make those</p> <p>20 today, correct?</p> <p>21 A. That's correct.</p> <p>22 Q. And so the cones themselves, what are they used</p> <p>23 for?</p> <p>24 A. To measure heat work. In the firing of ceramics.</p> <p>25 Q. Right. Okay. So just -- I'm -- and I'm asking you</p>

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<p style="text-align: right;">22</p> <p>1 these general questions because should this case go to trial</p> <p>2 a jury may be watching this videotape if you are unavailable</p> <p>3 and not have the understanding that you do or I do about</p> <p>4 these cones, okay?</p> <p>5 So -- or ceramics in general.</p> <p>6 A. Sure.</p> <p>7 Q. So you're talking about putting these cones inside</p> <p>8 a kiln when you're firing ceramics; is that right?</p> <p>9 A. That's correct.</p> <p>10 Q. Okay. And then how are the cones monitored?</p> <p>11 Typically? When they're inside a kiln?</p> <p>12 A. There's a couple of ways they're actually</p> <p>13 used. One is what we call a witness cone. A witness cone</p> <p>14 basically witnesses what has gone on in the furnace or the</p> <p>15 kiln.</p> <p>16 There are also cones that are used in shutoff</p> <p>17 devices where the cone actually, when it -- when it softens</p> <p>18 and deforms actually trips the power to the kiln and turns</p> <p>19 the kiln off, indicating that it has reached the proper</p> <p>20 amount of heat work. So those are the two ways they're used.</p> <p>21 Q. Okay. And the witness cone, is there some sort of</p> <p>22 window or something on a kiln that someone looks through to</p> <p>23 see if it's deformed?</p> <p>24 A. Yes. All kilns have, they call them peep sites,</p> <p>25 where you pull the plug out and you look in. You make sure</p>	<p style="text-align: right;">24</p> <p>1 that he's telling the truth and that's what he did, is</p> <p>2 there -- can you think of any reason why he might use that</p> <p>3 many cones?</p> <p>4 A. Yes, if he was concerned about the even heat</p> <p>5 distribution at different levels in his kiln.</p> <p>6 Q. Okay.</p> <p>7 A. If he had an older kiln. He might put more in.</p> <p>8 Q. Okay.</p> <p>9 A. To make sure the heat level, each level had reached</p> <p>10 the same temperature.</p> <p>11 Q. And are the cones rated some way?</p> <p>12 MS. GOLDEN: Objection, vague, I don't know what</p> <p>13 you mean by rated.</p> <p>14 MR. HAMES: Q. In other words, rated like they</p> <p>15 deform at certain temperatures or a certain period of time?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Can you tell me how many -- let's just start</p> <p>18 with the witness cones. How many different types of witness</p> <p>19 cones either based on their rating, their size -- or however</p> <p>20 you categorize them -- Orton manufactures?</p> <p>21 A. Over 40.</p> <p>22 Q. Okay. And are they numbered or lettered in some</p> <p>23 way?</p> <p>24 A. Numbered.</p> <p>25 Q. How are they numbered?</p>
<p style="text-align: right;">23</p> <p>1 they put the cone so when you pull the plug out you can see</p> <p>2 it, and if you're visually monitoring it, as the cone goes</p> <p>3 over and tips you know you have reached the proper amount of</p> <p>4 heat work (indicating). Turn the kiln off.</p> <p>5 Q. Okay. So there's basically two types. There's the</p> <p>6 witness cone, and what did you call the other one?</p> <p>7 A. Well, a shutoff device.</p> <p>8 Q. Shutoff?</p> <p>9 A. Yeah.</p> <p>10 Q. Are there any other types of cones? That Orton</p> <p>11 manufactures?</p> <p>12 A. No. Those are the only cones.</p> <p>13 Q. And just generally how many cones would an</p> <p>14 individual put inside a kiln when they're firing ceramics?</p> <p>15 And obviously it may vary on the individual, but just</p> <p>16 generally?</p> <p>17 A. Depending if they're using it as the cutoff device,</p> <p>18 the shutoff device.</p> <p>19 Q. Um-hum.</p> <p>20 A. One.</p> <p>21 Q. Okay.</p> <p>22 A. As witness cones, probably three.</p> <p>23 Q. Okay. There was a witness in this case who</p> <p>24 testified that he put a lot more than three in there. And he</p> <p>25 put them at different levels inside the kiln. Just assuming</p>	<p style="text-align: right;">25</p> <p>1 A. It starts out at 022 and that counts backward up to</p> <p>2 1. 022, 021, 020, 19 until you get to 1. And from 1 to 42.</p> <p>3 Q. I'm really confused by that.</p> <p>4 MS. GOLDEN: Isn't that more than 40?</p> <p>5 THE WITNESS: Yeah, I said more than 40.</p> <p>6 MS. GOLDEN: Oh, okay.</p> <p>7 MR. HAMES: Q. There's more than 40 different</p> <p>8 types.</p> <p>9 A. Different cone numbers.</p> <p>10 Q. Different cone numbers?</p> <p>11 A. And each number represents a different amount of</p> <p>12 heat work.</p> <p>13 Q. Let's take the 022 cone as the first one, okay?</p> <p>14 A. (Nodding.)</p> <p>15 Q. Which isn't really the first one. It's number 022.</p> <p>16 A. Right.</p> <p>17 Q. What does that number represent?</p> <p>18 A. It represents the temperature at which that cone</p> <p>19 will deform based on the time that it saw that temperature.</p> <p>20 Q. Okay. And then cone number 021, would that one --</p> <p>21 how does that one differ from 022?</p> <p>22 A. It was slight -- it would be slightly hotter.</p> <p>23 Q. Okay.</p> <p>24 A. In other words it would take a little bit more heat</p> <p>25 to deform it.</p>

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<p style="text-align: right;">26</p> <p>1 Q. Okay.</p> <p>2 A. 022 is -- if you're looking on the temperature</p> <p>3 scale, it's the coolest.</p> <p>4 Q. Okay.</p> <p>5 A. 42 is the hottest.</p> <p>6 Q. Okay. I'm still really confused about the</p> <p>7 numbering, okay? I understand that what you're saying is 022</p> <p>8 is the coolest. In other words it deforms at a lower</p> <p>9 temperature or heat work --</p> <p>10 A. That's right.</p> <p>11 Q. -- than 021.</p> <p>12 A. Yes.</p> <p>13 Q. And then the numbers go from 022 through 1 and then</p> <p>14 they start back up again going from 1 to 40? Two?</p> <p>15 A. Um-hum.</p> <p>16 Q. Is that right?</p> <p>17 A. That's correct.</p> <p>18 Q. Okay.</p> <p>19 A. The reason for that is they didn't plan ahead when</p> <p>20 they were starting the numbering system. And when they</p> <p>21 started at 1 they later decided they needed something that</p> <p>22 worked at a cooler temperature.</p> <p>23 So you don't want to use -- they apparently didn't</p> <p>24 want to use negative numbers.</p> <p>25 Q. Right. That's what it sounds like is 022 is</p>	<p style="text-align: right;">28</p> <p>1 head. But we have a chart, you know -- it's on the Internet.</p> <p>2 Q. Right.</p> <p>3 A. That you can look at.</p> <p>4 Q. Okay.</p> <p>5 A. But it's, I think it's --</p> <p>6 MS. GOLDEN: Wouldn't it depend on the kiln also?</p> <p>7 MR. HAMES: Q. I'm sure there's a lot of variables.</p> <p>8 A. It's a function of time and temperature.</p> <p>9 Q. Right.</p> <p>10 A. But it's below a thousand degrees.</p> <p>11 Q. Okay. And then number 42 -- is that in the</p> <p>12 thousands of degrees? That it would deform?</p> <p>13 A. That's -- yeah -- that's approaching about 1800</p> <p>14 degrees Centigrade.</p> <p>15 Q. Okay.</p> <p>16 A. Which is very, very hot.</p> <p>17 Q. Right. Okay. I noticed in some of the</p> <p>18 interrogatory responses it says that Orton's been</p> <p>19 manufacturing the cones since 1932?</p> <p>20 A. Um-hum.</p> <p>21 Q. Is that right?</p> <p>22 A. As the Edward Orton Junior Foundation.</p> <p>23 Q. Okay, so what happened in 1932 with the foundation?</p> <p>24 Was that when it was established?</p> <p>25 A. That's when it was established upon the death of</p>
<p style="text-align: right;">27</p> <p>1 essentially like a negative number. It's lower than 42.</p> <p>2 Would be, 42 would be the highest --</p> <p>3 A. Right.</p> <p>4 Q. -- correct?</p> <p>5 A. Yeah.</p> <p>6 Q. Okay. So let's just take number 42. How does that</p> <p>7 rating or that number for that cone differ from 022? The</p> <p>8 cone itself? In other words the heat work, what level does</p> <p>9 42 deform at versus 022?</p> <p>10 A. 42 is --</p> <p>11 MS. GOLDEN: You want to know at the temperature?</p> <p>12 MR. HAMES: Q. No, I just mean is it -- so -- it</p> <p>13 deforms at a much --</p> <p>14 A. Much --</p> <p>15 Q. -- higher?</p> <p>16 A. -- much higher temperature.</p> <p>17 Q. Okay, yeah.</p> <p>18 MS. GOLDEN: 42 is the highest.</p> <p>19 THE WITNESS: That's the highest --</p> <p>20 MS. GOLDEN: Yeah.</p> <p>21 THE WITNESS: -- temperature we make. Yeah.</p> <p>22 MR. HAMES: Q. And you raised a good point. Let me</p> <p>23 just ask, do you know for example at what temperature or how</p> <p>24 long 022 takes to deform?</p> <p>25 A. I can't tell you exactly. Off the top of my</p>	<p style="text-align: right;">29</p> <p>1 General Orton.</p> <p>2 Q. Okay. So he died in 1932?</p> <p>3 A. Um-hum.</p> <p>4 Q. Is that right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And then do you know how the foundation</p> <p>7 itself was established?</p> <p>8 A. Yes. Through his will.</p> <p>9 Q. So he must have had some money and then he created</p> <p>10 this nonprofit upon his death through his will?</p> <p>11 A. He basically gave the business -- that was the only</p> <p>12 thing that the foundation got was the business. No money.</p> <p>13 Q. Okay.</p> <p>14 A. A way of earning money.</p> <p>15 Q. Isn't there -- and there's at Ohio State or</p> <p>16 University of -- which one is it, Ohio State or University of</p> <p>17 Ohio?</p> <p>18 A. Ohio State.</p> <p>19 Q. Ohio State actually has a building there named</p> <p>20 after him, after General Orton, don't they?</p> <p>21 A. Actually, it's named after his father, but General</p> <p>22 Orton funded the building. His father was the first</p> <p>23 president of Ohio State University.</p> <p>24 Q. Okay. So was General Orton, was he -- and this is</p> <p>25 just for my own curiosity. Was he associated with the</p>

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<p style="text-align: right;">30</p> <p>1 university somehow?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. What was his position there, do you know?</p> <p>4 A. He -- he created the first school of ceramic</p> <p>5 engineering in the United States at Ohio State University.</p> <p>6 Q. Okay. And that just happens to be what your degree</p> <p>7 is in, right?</p> <p>8 A. It is.</p> <p>9 Q. What is that -- can you elaborate on that? What</p> <p>10 exactly is ceramic engineering?</p> <p>11 A. Basically, everything inorganic except</p> <p>12 metals. It's -- inorganic materials that are formed and heat</p> <p>13 processed to create a ceramic product. It can be from brick</p> <p>14 to the -- the tile that's used on the reentry of the space</p> <p>15 shuttle.</p> <p>16 Q. Okay. So this is generally, I mean, your degree is</p> <p>17 more associated with the commercial aspect of creating</p> <p>18 ceramic items versus say an artist?</p> <p>19 A. Oh, yeah.</p> <p>20 Q. Okay. Thanks for indulging me in the background of</p> <p>21 the company.</p> <p>22 A. No one would ever accuse me of being an artist.</p> <p>23 Q. All right. So you're not on the potter's wheel or</p> <p>24 anything like that?</p> <p>25 A. (Witness shakes head.)</p>	<p style="text-align: right;">32</p> <p>1 square feet.</p> <p>2 Q. Okay. In -- do you know in 1932 how the cones were</p> <p>3 packaged when they were sold to the public?</p> <p>4 A. In boxes I'm assuming.</p> <p>5 Q. Okay. You're saying you're assuming. Do you have</p> <p>6 some basis for knowing that they were packaged in boxes or</p> <p>7 are you just guessing?</p> <p>8 MS. GOLDEN: In 1932?</p> <p>9 MR. HAMES: Q. In 1932.</p> <p>10 A. Obviously I'm guessing.</p> <p>11 Q. Okay.</p> <p>12 A. I wasn't there.</p> <p>13 Q. And it could be things you've looked at, people</p> <p>14 you've spoken to that's the foundation for your knowledge.</p> <p>15 So I'm not just asking you what you have seen, obviously, you</p> <p>16 weren't alive then.</p> <p>17 So -- how are the cones packaged today?</p> <p>18 A. In boxes.</p> <p>19 Q. And how large are the boxes?</p> <p>20 A. There's two sizes. The largest size is</p> <p>21 approximately three inches by three inches by six inches.</p> <p>22 Q. That's the largest one?</p> <p>23 A. Yes.</p> <p>24 Q. What's the smallest one? Or the smaller one?</p> <p>25 A. It's -- again, I'm estimating on this one. It's</p>
<p style="text-align: right;">31</p> <p>1 Q. Okay. How were -- let's -- let's start in 1932</p> <p>2 when the foundation was created.</p> <p>3 How large was the foundation when it was created?</p> <p>4 Do you know? Like how many employees were there?</p> <p>5 A. No, I really don't -- I don't. I'd be guessing,</p> <p>6 and I --</p> <p>7 Q. Okay, I don't want you to guess. How big is Orton</p> <p>8 now? How many employees work there?</p> <p>9 A. We have 30.</p> <p>10 Q. Okay. And they're currently on the Old 3C Highway?</p> <p>11 A. Yes.</p> <p>12 Q. And what sort of facility is at that location?</p> <p>13 Is that an office building, or is there some sort of</p> <p>14 manufacturing plant?</p> <p>15 A. Both. There's offices and a manufacturing area.</p> <p>16 Q. Okay. And do you know at the -- the Summit Street</p> <p>17 one where they were before, what sort of facility was there</p> <p>18 at that time?</p> <p>19 A. It was -- it was the same. It was offices and</p> <p>20 manufacturing.</p> <p>21 Q. Okay. How large, just generally, so I get some</p> <p>22 sense of it, is the manufacturing plant?</p> <p>23 A. It's -- again, this is an estimate.</p> <p>24 Q. Or you can just describe it however --</p> <p>25 A. The manufacturing area for cones is probably 10,000</p>	<p style="text-align: right;">33</p> <p>1 about an inch and a half by two by three. Inches.</p> <p>2 Q. Okay. Do you know how long Orton has been using</p> <p>3 those sizes of boxes to package the cones in?</p> <p>4 A. Do I know how long?</p> <p>5 MS. GOLDEN: And you can provide approximations,</p> <p>6 you know. It's not like you need to provide an exact date or</p> <p>7 year.</p> <p>8 MR. HAMES: Q. Right. I mean, if it's down to a</p> <p>9 year or decade or whatever.</p> <p>10 A. I just -- talking to the people who have worked</p> <p>11 there who have retired since I've been there, they were in</p> <p>12 boxes back in the '50's and '60's.</p> <p>13 Q. Okay. So the earliest date is sometime in the</p> <p>14 '50's they were in boxes?</p> <p>15 A. That I can confirm.</p> <p>16 Q. Okay. Who did you talk to to get that information?</p> <p>17 A. Dale Fronk.</p> <p>18 Q. Can you spell his full name, please?</p> <p>19 A. D-a-l-e F-r-o-n-k.</p> <p>20 Q. Okay. In preparation for your deposition today,</p> <p>21 obviously we have some documents which we're going to go</p> <p>22 through. Is there anything that you reviewed as far as</p> <p>23 documents that has not been produced here today? That you're</p> <p>24 aware of? And you can look through this stuff.</p> <p>25 MS. GOLDEN: Are you done with your question?</p>

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<p style="text-align: right;">34</p> <p>1 MR. HAMES: Yeah.</p> <p>2 MS. GOLDEN: Okay, I'm going to object. That's</p> <p>3 over broad. It's vague. It's ambiguous. And I'd also like</p> <p>4 to call attention once again to our objections to the depo</p> <p>5 notice and the production of documents request. Further,</p> <p>6 I -- I'm going to object as, you know, privileged also.</p> <p>7 MR. HAMES: Yeah, and I'm not talking about</p> <p>8 anything from your attorneys.</p> <p>9 MS. GOLDEN: Oh. All right.</p> <p>10 MR. HAMES: Because that is privileged.</p> <p>11 MS. GOLDEN: So could you rephrase the question, or</p> <p>12 would you like the court reporter to read it back?</p> <p>13 MR. HAMES: Q. I'm just wondering what you reviewed</p> <p>14 in preparation for your deposition today.</p> <p>15 MS. GOLDEN: Okay.</p> <p>16 THE WITNESS: The deposition.</p> <p>17 MR. HAMES: Q. Excluding anything with your</p> <p>18 attorneys. Well, I mean, the documents with your attorneys</p> <p>19 wouldn't be privileged.</p> <p>20 THE WITNESS: The deposition notice.</p> <p>21 MR. HAMES: Q. Okay.</p> <p>22 A. And the documents that I see laying on the table in</p> <p>23 front of me.</p> <p>24 Q. Anything else?</p> <p>25 A. No.</p>	<p style="text-align: right;">36</p> <p>1 answer the question.</p> <p>2 MR. HAMES: Q. Well, did you speak to him in</p> <p>3 preparation for your deposition?</p> <p>4 A. No.</p> <p>5 Q. When was the last time you spoke to Dale?</p> <p>6 MS. GOLDEN: About anything?</p> <p>7 MR. HAMES: Q. Um-hum. Yes</p> <p>8 A. June of this year. When he retired.</p> <p>9 Q. Okay. So he retired in June of 2007?</p> <p>10 A. That's correct.</p> <p>11 Q. What was his position at Orton?</p> <p>12 A. He was the manager of engineering.</p> <p>13 Q. Do you know how long he worked for Orton?</p> <p>14 A. In excess of 40 years. I'm not sure if it was 42</p> <p>15 or 43 years.</p> <p>16 Q. Okay. And to my understanding that from your</p> <p>17 conversations with Mr. Fronk -- or Dale -- that you have a</p> <p>18 belief that Orton was packaging the pyrometric cones in the</p> <p>19 boxes as you described.</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Other than Mr. Fronk, is there anyone else</p> <p>22 or any other documents that have provided you with that</p> <p>23 information? Regarding the boxes?</p> <p>24 MS. GOLDEN: Yeah. I guess we're talking about the</p> <p>25 size of the boxes.</p>
<p style="text-align: right;">35</p> <p>1 Q. Okay. You've mentioned one individual, Dale Fronk?</p> <p>2 A. Um-hum.</p> <p>3 Q. Have you spoken with anyone else in preparation for</p> <p>4 your deposition?</p> <p>5 A. Yes.</p> <p>6 Q. Who else have you spoken with?</p> <p>7 A. Bill Chase.</p> <p>8 Q. Anyone else?</p> <p>9 A. Yes. Claire Sampson, S-a-m-p-s-o-n.</p> <p>10 Q. That's C-l-a-i-r?</p> <p>11 A. E. C-l-a-i-r-e.</p> <p>12 Q. Anyone else you've spoken to?</p> <p>13 A. No.</p> <p>14 Q. Let's take them in order. When did you speak to</p> <p>15 Mr. Fronk?</p> <p>16 MS. GOLDEN: Okay, let's go back. I'm going to</p> <p>17 object, because when did he speak to Mr. Fronk about what?</p> <p>18 Are we still on the size of the boxes?</p> <p>19 MR. HAMES: No, I moved away from that. I'm just</p> <p>20 talking about in preparation for your deposition today.</p> <p>21 Obviously, you've probably talked to him more than once in</p> <p>22 your lifetime. I'm just talking about in preparation for</p> <p>23 your deposition.</p> <p>24 MS. GOLDEN: Oh, okay. I don't know that he even</p> <p>25 spoke to Dale in preparation for his deposition. But you can</p>	<p style="text-align: right;">37</p> <p>1 MR. HAMES: Q. And when they were using them.</p> <p>2 MS. GOLDEN: I think we go back to that.</p> <p>3 MR. HAMES: Q. And when they were using them.</p> <p>4 A. Mr. Chase.</p> <p>5 Q. Okay. So Mr. Chase told you that also?</p> <p>6 A. Um-hum.</p> <p>7 Q. That's a yes?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And what about Claire Sampson?</p> <p>10 A. What about her?</p> <p>11 Q. Did she tell you anything about when they were</p> <p>12 using boxes as packaging?</p> <p>13 A. No.</p> <p>14 Q. All right. So what did Mr. Fronk tell you with</p> <p>15 regards to the packaging and the years that Orton was using</p> <p>16 boxes?</p> <p>17 MS. GOLDEN: Okay, I'm going to object. This is</p> <p>18 vague. It's ambiguous. It's over broad.</p> <p>19 MR. HAMES: Q. Do you understand my question?</p> <p>20 MS. GOLDEN: You can --</p> <p>21 THE WITNESS: Not exactly.</p> <p>22 MR. HAMES: Q. You're kind of frowning. Okay. So</p> <p>23 was there an instance when you called up Mr. Fronk or talked</p> <p>24 to him and asked him specifically how did we package our</p> <p>25 cones back in the -- you know -- '50's?</p>

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<p style="text-align: right;">38</p> <p>1 A. No.</p> <p>2 Q. Okay. How did -- how did that conversation come</p> <p>3 about when he told you that they were using boxes in the</p> <p>4 1950's?</p> <p>5 A. Just in general conversation when he worked there.</p> <p>6 Q. Was there one specific conversation or is this just</p> <p>7 a general recollection?</p> <p>8 A. Just a general recollection.</p> <p>9 Q. Okay. Have you ever seen any of the pyrometric</p> <p>10 cones that were manufactured back in the 1950's? Like they</p> <p>11 still had some around?</p> <p>12 A. I don't know. I don't know when -- I don't know</p> <p>13 that I have.</p> <p>14 Q. Okay. What about in the 1960's?</p> <p>15 A. I don't know that I have.</p> <p>16 Q. Okay. What is the oldest box of pyrometric cones</p> <p>17 you think you've ever actually seen?</p> <p>18 A. Oh, wow. I can't -- I'm not sure I can answer that</p> <p>19 question. Because I don't -- I don't know.</p> <p>20 Q. Okay.</p> <p>21 A. I -- it --</p> <p>22 Q. At least it would be in 2001 when you started</p> <p>23 working there?</p> <p>24 A. Certainly. And there was probably something prior</p> <p>25 to that, because inventory stays around for a while. But I</p>	<p style="text-align: right;">40</p> <p>1 MR. HAMES: Q. Well, were they in boxes?</p> <p>2 MS. GOLDEN: Okay.</p> <p>3 THE WITNESS: Yes.</p> <p>4 MR. HAMES: Q. Did you ever see any of those boxes</p> <p>5 opened when you were working for Eljer during that time</p> <p>6 period from '75 to '79?</p> <p>7 A. Actually, I didn't handle them. We had a kiln</p> <p>8 fireman who took care of putting them in the kiln every day</p> <p>9 So I only saw them on the shelf.</p> <p>10 Q. Okay, I understand that. I just want to make sure</p> <p>11 the record's clear. So did you ever see any of the boxes</p> <p>12 back when you were working for Eljer Plumbing of the Orton</p> <p>13 pyrometric cones opened at any time?</p> <p>14 A. No.</p> <p>15 Q. Okay. So obviously what I'm interested in is the</p> <p>16 material inside the boxes that's holding the cones, okay?</p> <p>17 So do you know other than the boxes itself what was</p> <p>18 inside the boxes of pyrometric cones at the time you were</p> <p>19 working for Eljer Plumbing back in 1975 through '79?</p> <p>20 A. No, actually I don't.</p> <p>21 Q. Okay. What are the cones packaged in today?</p> <p>22 A. A sheet -- of sheet foam.</p> <p>23 Q. A sheet of like styrofoam?</p> <p>24 A. No, it's more like the soft foam that you see put</p> <p>25 around China plates and things like that. It's a gray</p>
<p style="text-align: right;">39</p> <p>1 can't tell you exactly.</p> <p>2 Q. When you mentioned that when you were working for I</p> <p>3 think it was Eljer Plumbing Ware that you actually used some</p> <p>4 Orton cones --</p> <p>5 A. Eljer.</p> <p>6 Q. -- in that business.</p> <p>7 A. Eljer used the Orton cones.</p> <p>8 Q. Did you ever actually see the boxes of the Orton</p> <p>9 cones back when you were working for Eljer?</p> <p>10 A. Yeah, I saw the boxes.</p> <p>11 Q. Okay. So that was sometime between 1975 and 1979</p> <p>12 when you were working for them?</p> <p>13 A. That's correct.</p> <p>14 Q. All right. So the earliest box of cones that you</p> <p>15 may have seen would have been sometime between '75 and '79?</p> <p>16 A. Yes.</p> <p>17 Q. Do you think that you ever saw any Orton cones in</p> <p>18 their packaging prior to that?</p> <p>19 A. I have no way of knowing.</p> <p>20 Q. Okay. Do you recall how they were packaged when</p> <p>21 you were working for Eljer Plumbing?</p> <p>22 A. They were --</p> <p>23 MS. GOLDEN: Okay, I'm going to object, it's vague</p> <p>24 and ambiguous and over broad. What do you mean by how are</p> <p>25 they packaged?</p>	<p style="text-align: right;">41</p> <p>1 material. It's softer than styrofoam. It's like -- I don't</p> <p>2 know -- it's about a quarter of an inch thick but it's</p> <p>3 puffy. Styrofoam is fairly rigid.</p> <p>4 Q. Um-hum.</p> <p>5 A. Like a styrofoam cup. This is soft.</p> <p>6 Q. Okay. And how many cones are in, let's say, the</p> <p>7 largest box?</p> <p>8 A. It depends on the -- on the cone.</p> <p>9 What we call large cones, there's 50.</p> <p>10 Q. Okay. And what about the small cones? How many</p> <p>11 would be in the larger box?</p> <p>12 A. They're not packaged in the larger box.</p> <p>13 Q. Okay, they're packaged in the small box?</p> <p>14 A. Yeah.</p> <p>15 Q. So how many would be in the small box?</p> <p>16 A. 50.</p> <p>17 Q. All right. Are there -- is that pretty standard or</p> <p>18 are there other quantities that are in those boxes? Other</p> <p>19 than 50?</p> <p>20 A. What we call a self supporting cone, which is a</p> <p>21 large cone with its own foot. There's 25.</p> <p>22 Q. Is that the fewest number that would be in a box?</p> <p>23 A. Yes.</p> <p>24 Q. All right. When did Orton start using the foam</p> <p>25 inside the boxes? To package the cones?</p>

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<p style="text-align: right;">42</p> <p>1 A. In 1983.</p> <p>2 Q. And have they used that foam continuously from 1983</p> <p>3 to the present?</p> <p>4 A. Yes.</p> <p>5 Q. And I didn't ask you. With respect to Mr. Chase --</p> <p>6 A. Yes.</p> <p>7 Q. -- is there one conversation that you had with Mr.</p> <p>8 Chase pertaining to when Orton was packaging the cones in the</p> <p>9 boxes?</p> <p>10 MS. GOLDEN: I'm sorry, can I have that question</p> <p>11 read back, please?</p> <p>12 (Record read.)</p> <p>13 THE WITNESS: No.</p> <p>14 MR. HAMES: Q. Did you review or have you seen any</p> <p>15 documents pertaining to how the cones were packaged? And</p> <p>16 let's go back to the time that you mentioned, 1950's when</p> <p>17 they were using boxes?</p> <p>18 MS. GOLDEN: Are you talking -- I'm going to object</p> <p>19 as vague and ambiguous and over broad.</p> <p>20 THE WITNESS: I'm not sure I understand what you're</p> <p>21 asking me.</p> <p>22 MR. HAMES: Q. Well, other than speaking to Mr.</p> <p>23 Fronk and Mr. Chase is there any other way that you know that</p> <p>24 Orton was using boxes to package the pyrometric cones? In</p> <p>25 other words have you seen anything? A photograph?</p>	<p style="text-align: right;">44</p> <p>1 we take a break?</p> <p>2 MR. HAMES: Yeah, we can take a break.</p> <p>3 MS. GOLDEN: Good.</p> <p>4 THE VIDEOGRAPHER: Going off the record now, the</p> <p>5 time is 11:22.</p> <p>6 (Brief recess taken.)</p> <p>7 THE VIDEOGRAPHER: Back on the record. The time is</p> <p>8 11:29.</p> <p>9 MR. HAMES: Q. Okay, I want to ask you some</p> <p>10 questions about your declaration, so let's go ahead and why</p> <p>11 don't we mark that copy I handed your counsel.</p> <p>12 And you've seen this declaration before, obviously,</p> <p>13 right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And is that your signature on the second</p> <p>16 page?</p> <p>17 A. It is.</p> <p>18 Q. Okay. I just want to walk through it.</p> <p>19 A. Okay.</p> <p>20 Q. Now, in paragraph 2?</p> <p>21 A. Um-hum.</p> <p>22 Q. The second clause there is I have gained intimate</p> <p>23 and extensive knowledge of the pyrometric cones that Orton</p> <p>24 manufactures and has distributed over the course of its</p> <p>25 history.</p>
<p style="text-align: right;">43</p> <p>1 Specifications? Anything like that?</p> <p>2 A. No.</p> <p>3 Q. Okay. What was Orton using prior to 1983 for the</p> <p>4 packaging inside the boxes for the pyrometric cones?</p> <p>5 A. The packaging material?</p> <p>6 Q. Yes. Inside the boxes?</p> <p>7 A. Vermiculite.</p> <p>8 Q. Okay. And when did Orton start using Vermiculite?</p> <p>9 A. 1963.</p> <p>10 Q. How do you know that?</p> <p>11 MS. GOLDEN: I'm going to object. It's</p> <p>12 argumentative. You can go ahead and answer.</p> <p>13 THE WITNESS: How I know that?</p> <p>14 MS. GOLDEN: Um-hum.</p> <p>15 THE WITNESS: I reviewed retained canceled checks.</p> <p>16 And we pulled all the ones that were written to Zonolite,</p> <p>17 W.R. Grace, and J.P. Austin and that was the first time that</p> <p>18 we wrote a check to Zonolite was in 1963.</p> <p>19 Q. Okay. Let's -- you know what I want to do right</p> <p>20 now, is I'm -- I have a copy of your declaration here that</p> <p>21 you signed in this case. Let me hand it to your attorney.</p> <p>22 We'll go ahead and mark this.</p> <p>23 (Whereupon Plaintiff's Exhibit 2 was marked for</p> <p>24 identification.)</p> <p>25 MS. GOLDEN: How long have we been going now? Can</p>	<p style="text-align: right;">45</p> <p>1 Can you elaborate on that and tell me what it is</p> <p>2 that is the foundation for your intimate and extensive</p> <p>3 knowledge of -- of Orton's pyrometric cones?</p> <p>4 MS. GOLDEN: I'm going to object. As to -- as to</p> <p>5 foundation, calls for a legal conclusion. It's over -- it's</p> <p>6 vague.</p> <p>7 Do you understand what foundation means? That's</p> <p>8 what I'm thinking.</p> <p>9 THE WITNESS: I'm not sure what you're asking</p> <p>10 about.</p> <p>11 MS. GOLDEN: Yeah.</p> <p>12 MR. HAMES: Q. In other words, this sentence here</p> <p>13 in paragraph 2 is -- what I'm trying to figure out is is</p> <p>14 there something specific that you have reviewed, or someone</p> <p>15 you have spoken with to support this sentence that you have</p> <p>16 gained intimate and extensive knowledge of the pyrometric</p> <p>17 cones that Orton manufactures and distributes?</p> <p>18 MS. GOLDEN: Other than what he's already testified</p> <p>19 to?</p> <p>20 MR. HAMES: Q. Yes.</p> <p>21 A. Other than what I've already testified to? No.</p> <p>22 Q. Okay. Is there something that you've -- for</p> <p>23 example, is there something that you've read pertaining to</p> <p>24 the history of the company and the manufacture of the cones?</p> <p>25 Other than what has been produced here today?</p>

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<p style="text-align: right;">46</p> <p>1 MS. GOLDEN: Wait a minute, wait a minute. I'm 2 going to object to this. You -- one, I don't understand 3 where this is going, and two, he's already testified about 4 the history of the corporation. 5 MR. HAMES: And I'm trying -- I understand that, 6 and what I'm trying to ascertain is where that knowledge 7 comes from. 8 Q. What you've read. What you've looked at. Who 9 you've spoken with other than what we've already talked about 10 today. 11 MS. GOLDEN: Okay. And right now you're asking 12 about how he found out about the history of the corporation? 13 MR. HAMES: That's right. 14 MS. GOLDEN: Even though -- okay. 15 THE WITNESS: Through documents that are in the 16 file regarding a celebration of General Orton that was held 17 at Ohio State, and that was put together about -- I'm going 18 to say 12 to 15 years ago. And it had all of the information 19 about General Orton, what he did, and all the contributions 20 he's made to the community. How he saw that there was a need 21 for this type of product. He traveled to Germany. Met with 22 Dr. Seager. 23 MS. GOLDEN: That's okay, you don't need to say 24 anything else. You've answered the question. 25 MR. HAMES: Q. Do you still have a copy of that?</p>	<p style="text-align: right;">48</p> <p>1 record. 2 But -- let's move on. 3 So -- and can you look at paragraph number 3 for me 4 and just review that real quick? 5 MS. GOLDEN: You want him to read the whole 6 paragraph? 7 MR. HAMES: Q. Well, let's just take the first 8 part. 9 (Pause.) 10 THE WITNESS: Okay. 11 MR. HAMES: Q. First sentence. 12 A. Um-hum. 13 Q. Okay. The documents that you have reviewed, are 14 those documents that have been produced here today? 15 A. Yes. 16 Q. Are there any other documents that you've reviewed 17 that you're referencing in paragraph 3 that have not been 18 produced today? 19 MS. GOLDEN: Okay, I'm going to object to 20 this. Because of the only thing that we need to tell you 21 about or produce are documents that are responsive to your 22 request. All right? 23 So -- like I've told you before, we're not going on 24 a big fishing expedition here, okay? A search has been done 25 and this is what we have produced responsive to your</p>
<p style="text-align: right;">47</p> <p>1 Or does the company have a copy of that? 2 A. Oh, yeah. 3 Q. Okay. Do you know who compiled that information? 4 A. Not for certain who participated in it. I'm 5 assuming the person who was the general manager at the 6 time. 7 Q. Okay. 8 And did you guys bring that today, Catherine? 9 MS. GOLDEN: No, I don't have that with me. 10 MR. HAMES: Okay. 11 Q. And this information is just the background of the 12 company, essentially, and who Mr. -- or General Orton was? 13 Is that right? 14 A. That's correct. 15 Q. Does it say anything that you recall about how the 16 cones were manufactured or how they were packaged? 17 A. Oh, no. 18 Q. It does not? 19 A. No, it doesn't. 20 Q. Okay. So it's just general information about the 21 company and about General Orton himself? 22 A. Primarily about General Orton. 23 Q. Okay. Obviously we think that's responsive. We'd 24 like to get a copy of it. I understand that you guys have 25 your objection as well. So I'm just saying it for the</p>	<p style="text-align: right;">49</p> <p>1 request. 2 MR. HAMES: I understand that. 3 MS. GOLDEN: Okay. 4 MR. HAMES: I'm not talking about our request right 5 now. 6 MS. GOLDEN: Don't interrupt me. I don't 7 understand your question. 8 MR. HAMES: I'm not asking him about anything 9 pertaining to our document request right now. What I'm 10 talking about is what he's referencing in his declaration. 11 He specifically says in his declaration I have 12 reviewed documents and information -- 13 MS. GOLDEN: Right. 14 MR. HAMES: Q. -- in the possession of Orton. So 15 my question is are those the same documents that you're 16 referencing in paragraph 3 that have been produced here 17 today, or are there other documents? Whether or not they're 18 responsive. And need to be produced. 19 MS. GOLDEN: He's asking you about have you 20 reviewed documents. 21 THE WITNESS: Yeah. 22 MS. GOLDEN: Okay. 23 THE WITNESS: These are the documents. 24 MS. GOLDEN: Have you reviewed more documents than 25 this?</p>

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<p style="text-align: right;">50</p> <p>1 THE WITNESS: No.</p> <p>2 MR. HAMES: Q. Right. That's what my question</p> <p>3 is. So there's no other documents other than what's here</p> <p>4 today that you have reviewed?</p> <p>5 A. No.</p> <p>6 Q. Okay. Double negative.</p> <p>7 MS. GOLDEN: Let me take a break.</p> <p>8 MR. HAMES: Okay.</p> <p>9 THE VIDEOGRAPHER: Going off the record. The time</p> <p>10 is 11:35.</p> <p>11 (Brief recess taken.)</p> <p>12 THE VIDEOGRAPHER: Back on the record. The time is</p> <p>13 11:39.</p> <p>14 MS. GOLDEN: Okay, Mr. -- I mean Scott, you asked</p> <p>15 Gary about his review of documents. I think there was a</p> <p>16 little confusion about what you were asking about.</p> <p>17 MR. HAMES: Okay.</p> <p>18 MS. GOLDEN: Okay?</p> <p>19 So I can either ask the question or you can</p> <p>20 rephrase. Or --</p> <p>21 We can even have it read back.</p> <p>22 MR. HAMES: Let me just ask another question.</p> <p>23 MS. GOLDEN: Yeah.</p> <p>24 MR. HAMES: Q. Okay. So what I'm referring to</p> <p>25 specifically is your paragraph number 3 in your declaration,</p>	<p style="text-align: right;">52</p> <p>1 basically stack of canceled checks that you have.</p> <p>2 Q. Okay. And why don't we just mark these right</p> <p>3 now. Okay? I don't know how many pages it is. We're going</p> <p>4 to need to get a page count on this, I think. I'll reference</p> <p>5 it right now. Why don't we mark it as Exhibit 3.</p> <p>6 (Whereupon Plaintiff's Exhibit 3 was marked for</p> <p>7 identification.)</p> <p>8 MR. HAMES: Q. The first check is dated March 20th,</p> <p>9 1963 and it's for \$662.24 and it's to the Zonolite Company.</p> <p>10 The last check is dated 3/24/83 to J.P. Austin for</p> <p>11 \$2,350.</p> <p>12 Okay, so let me mark all this.</p> <p>13 Okay, thank you. All right, so I understand, you</p> <p>14 reviewed -- there's more checks than is now in Exhibit 3 that</p> <p>15 you looked at.</p> <p>16 A. A lot more.</p> <p>17 Q. Okay. And you went through and pulled out these</p> <p>18 particular ones, correct?</p> <p>19 A. Um-hum.</p> <p>20 Q. Yes?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And what was it that you were looking for</p> <p>23 when you were pulling these checks out?</p> <p>24 A. The name of the company.</p> <p>25 Q. Which company?</p>
<p style="text-align: right;">51</p> <p>1 okay?</p> <p>2 A. Um-hum.</p> <p>3 Q. That first sentence. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And it says in this sentence that you have reviewed</p> <p>6 documents and information in the possession of Orton --</p> <p>7 A. Um-hum.</p> <p>8 Q. -- regarding the contents of the packaging</p> <p>9 materials contained in the boxes of pyrometric cones over the</p> <p>10 course of the company's history.</p> <p>11 With respect to that particular sentence, what</p> <p>12 documents are you referring to?</p> <p>13 A. Okay. When we came up with this stack of checks</p> <p>14 that you have --</p> <p>15 Q. Okay.</p> <p>16 A. -- I was actually part and party to the team of</p> <p>17 people who went through all the checks to help come up with</p> <p>18 these.</p> <p>19 So I looked at all the checks.</p> <p>20 Q. Okay.</p> <p>21 A. Or I helped look at all the checks. That were in</p> <p>22 Orton's possession.</p> <p>23 Q. Okay.</p> <p>24 A. So yeah, I did -- I didn't just look at these</p> <p>25 checks. I looked at all the checks. I helped create this</p>	<p style="text-align: right;">53</p> <p>1 A. The company that the check was written to.</p> <p>2 Q. Okay. And which company's names were you looking</p> <p>3 for?</p> <p>4 A. Zonolite, W.R. Grace, and J.P. Austin.</p> <p>5 Q. And why was it that you were looking for those</p> <p>6 particular companies?</p> <p>7 A. Because the document request when we found these, I</p> <p>8 think it asked for any -- any information that we had</p> <p>9 recording where we had purchased Vermiculite.</p> <p>10 Q. Okay. And those three companies, the Zonolite</p> <p>11 Company, W.R. Grace, and J.P. Austin as far as you know are</p> <p>12 the only companies that have ever supplied Zonolite -- or</p> <p>13 Vermiculite to Orton; is that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. And how do you know that?</p> <p>16 A. Conversations with Mr. Fronk.</p> <p>17 Q. Anyone else?</p> <p>18 A. Bill Chase.</p> <p>19 Q. Okay. So essentially you asked those two -- I</p> <p>20 think you said Mr. Chase has retired as well, right?</p> <p>21 A. No.</p> <p>22 Q. He's not retired?</p> <p>23 A. No.</p> <p>24 Q. What's his position?</p> <p>25 A. He's production manager.</p>

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<p style="text-align: right;">54</p> <p>1 Q. How long has he worked there?</p> <p>2 A. Almost 40 years.</p> <p>3 Q. Okay. So you asked Mr. Chase and Mr. Fronk who</p> <p>4 supplied -- which company supplied the Vermiculite to Orton?</p> <p>5 A. (Nodding.)</p> <p>6 Q. Is that right?</p> <p>7 A. That's correct.</p> <p>8 Q. And they gave you the names of those three</p> <p>9 companies?</p> <p>10 A. That's correct.</p> <p>11 Q. Okay. How far back did the checks go? That you</p> <p>12 reviewed?</p> <p>13 A. We have retained canceled checks through January of</p> <p>14 1957.</p> <p>15 Q. Okay.</p> <p>16 A. And we have a disbursement ledger which is like a</p> <p>17 check ledger that you keep in your checkbook for who you</p> <p>18 write a check to, when you wrote it and for how much, it goes</p> <p>19 back to 1910.</p> <p>20 Q. Okay. So is there anything other than these checks</p> <p>21 and the one -- and the ledger and the other checks that you</p> <p>22 didn't pull out to make Exhibit number 3 that you reviewed</p> <p>23 when -- that you're referring to in paragraph number 3 of</p> <p>24 your declaration?</p> <p>25 MS. GOLDEN: Well, we produced other documents to</p>	<p style="text-align: right;">56</p> <p>1 MS. GOLDEN: You know what?</p> <p>2 MR. HAMES: I understand --</p> <p>3 MS. GOLDEN: This is where we're going to get into</p> <p>4 it here, Scott, because you cannot interrupt me when I am</p> <p>5 speaking, okay? Everything that we gave you has to do with</p> <p>6 packaging material. Okay?</p> <p>7 MR. HAMES: I understand that.</p> <p>8 MS. GOLDEN: Okay.</p> <p>9 MR. HAMES: I'm asking about this particular</p> <p>10 sentence in his declaration. I'm asking what he's referring</p> <p>11 to. In this one sentence in paragraph 3.</p> <p>12 MS. GOLDEN: Packing materials.</p> <p>13 MR. HAMES: Yes.</p> <p>14 MS. GOLDEN: Right.</p> <p>15 MR. HAMES: Yes.</p> <p>16 MS. GOLDEN: Okay. The W.R. Grace materials --</p> <p>17 MR. HAMES: I want him to answer.</p> <p>18 MS. GOLDEN: Say the data sheet.</p> <p>19 MR. HAMES: Okay.</p> <p>20 MS. GOLDEN: Okay, fine.</p> <p>21 MR. HAMES: You're feeding him the answers.</p> <p>22 MS. GOLDEN: This is the problem that we have.</p> <p>23 MR. HAMES: It's very simple.</p> <p>24 MS. GOLDEN: No, it's not simple, Scott, to</p> <p>25 somebody that has never had his deposition taken, and you</p>
<p style="text-align: right;">55</p> <p>1 you.</p> <p>2 MR. HAMES: I understand that.</p> <p>3 MS. GOLDEN: So, you know.</p> <p>4 MR. HAMES: I'm just talking about --</p> <p>5 MS. GOLDEN: You're not asking him about all the</p> <p>6 documents that have been produced.</p> <p>7 MR. HAMES: I know. I'm limiting it to what he's</p> <p>8 referencing in paragraph number 3 pertaining to the packaging</p> <p>9 materials contained in the boxes.</p> <p>10 MS. GOLDEN: Okay. So we're still just on that</p> <p>11 sentence.</p> <p>12 MR. HAMES: Just that sentence.</p> <p>13 MS. GOLDEN: Oh, okay.</p> <p>14 MR. HAMES: Q. Other than these checks and the ones</p> <p>15 that you looked at and the ledger is there anything else that</p> <p>16 you're referring to pertaining to the packaging material? Or</p> <p>17 the packing materials, rather? In the boxes?</p> <p>18 MS. GOLDEN: I'm going to object because the other</p> <p>19 documents that we gave you refer to packaging material. They</p> <p>20 refer to Vermiculite.</p> <p>21 MR. HAMES: But I'm asking --</p> <p>22 MS. GOLDEN: That's what you want to know, right?</p> <p>23 Yeah. That's exactly what it says.</p> <p>24 MR. HAMES: Well, okay, Catherine, you're coaching</p> <p>25 him. You're answering for him.</p>	<p style="text-align: right;">57</p> <p>1 questions are over broad, vague, and they're ambiguous. All</p> <p>2 right?</p> <p>3 MR. HAMES: It's -- look. This doesn't have to be</p> <p>4 a fight.</p> <p>5 MS. GOLDEN: This is not a fight.</p> <p>6 MR. HAMES: I'm actually referring to something</p> <p>7 that he signed. I'm asking him what he reviewed.</p> <p>8 Specifically it says in here I have reviewed documents and</p> <p>9 information --</p> <p>10 MS. GOLDEN: Right.</p> <p>11 MR. HAMES: -- in their possession pertaining to</p> <p>12 the packing materials. I'm paraphrasing his declaration.</p> <p>13 MS. GOLDEN: Right.</p> <p>14 MR. HAMES: I'm asking him what he reviewed that</p> <p>15 he's referring to in his declaration.</p> <p>16 MS. GOLDEN: Right.</p> <p>17 MR. HAMES: Not what's been produced. Not what may</p> <p>18 or may not be responsive to our document request. But what</p> <p>19 he's referring to in his declaration.</p> <p>20 MS. GOLDEN: Right.</p> <p>21 MR. HAMES: If there's anything else. That's all.</p> <p>22 MS. GOLDEN: Right. And I am telling you that he</p> <p>23 is thinking in a very narrow frame of mind, and it's not</p> <p>24 getting to the whole picture here, and I -- I am trying to</p> <p>25 get you to the whole picture. All right?</p>

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<p style="text-align: right;">58</p> <p>1 MR. HAMES: Okay.</p> <p>2 Now that you're -- now that we've had this</p> <p>3 discussion --</p> <p>4 Q. Do you understand my question?</p> <p>5 A. Well -- let me see if I do.</p> <p>6 Q. Okay.</p> <p>7 A. You are asking me have I looked at other documents</p> <p>8 than those documents produced?</p> <p>9 Q. Yes. Essentially.</p> <p>10 A. No.</p> <p>11 Q. Okay. And the documents that are produced -- that</p> <p>12 have been produced are what you're referring to in paragraph</p> <p>13 3, the first sentence in paragraph 3 of your declaration,</p> <p>14 correct?</p> <p>15 A. Well, and where they came from. Like -- you</p> <p>16 know -- several boxes of checks that were reviewed to come up</p> <p>17 with these, yes.</p> <p>18 Q. Are there any other documents other than the boxes</p> <p>19 of checks and the ledger that you referenced that you</p> <p>20 reviewed in reference to paragraph 3 of your declaration?</p> <p>21 A. Yeah. The ones -- the rest -- everything that we</p> <p>22 produced I saw.</p> <p>23 Q. Okay.</p> <p>24 A. I reviewed all of that. But then it came from us.</p> <p>25 Q. Okay. Got it. And then you've also -- and then in</p>	<p style="text-align: right;">60</p> <p>1 You have asked him many questions. He has</p> <p>2 testified about people he's spoke to and where he got</p> <p>3 information. Okay?</p> <p>4 MR. HAMES: I'm asking about --</p> <p>5 MS. GOLDEN: Now you're looking at his declaration</p> <p>6 and you're asking him the same exact questions he has already</p> <p>7 answered for you. And I think it is confusing him. I am not</p> <p>8 trying in any way to stop you from finding out the</p> <p>9 information that you are looking for. Okay?</p> <p>10 But he's already answered about people he spoke to</p> <p>11 and where he got information.</p> <p>12 Then you're going and you're showing him this</p> <p>13 declaration, okay, and asking him the same questions again.</p> <p>14 I would find that confusing also.</p> <p>15 MR. HAMES: Thank you.</p> <p>16 MS. GOLDEN: Okay?</p> <p>17 MR. HAMES: Are you finished? I don't want to</p> <p>18 interrupt you.</p> <p>19 MS. GOLDEN: Oh, yes.</p> <p>20 MR. HAMES: You get upset when I interrupt you.</p> <p>21 MS. GOLDEN: Okay, I am finished.</p> <p>22 MR. HAMES: Okay. Do you want to take a break?</p> <p>23 MS. GOLDEN: No.</p> <p>24 MR. HAMES: Okay.</p> <p>25 MS. GOLDEN: We already took a break.</p>
<p style="text-align: right;">59</p> <p>1 this sentence it says documents and information in the</p> <p>2 possession of Orton. What information are you referring to?</p> <p>3 MS. GOLDEN: Objection, that's vague, ambiguous,</p> <p>4 over broad. Clearly over broad.</p> <p>5 MR. HAMES: That's because the sentence is vague</p> <p>6 and over broad.</p> <p>7 MS. GOLDEN: You know what? Please don't interrupt</p> <p>8 me, okay? Because that's not going to work.</p> <p>9 MR. HAMES: All right.</p> <p>10 MS. GOLDEN: He has already told you people that</p> <p>11 he's talked to. Okay, that's other information.</p> <p>12 MR. HAMES: Catherine, you are 100 percent telling</p> <p>13 him what to answer and coaching him.</p> <p>14 MS. GOLDEN: No, I'm not. No, I'm not.</p> <p>15 MR. HAMES: You're make speaking objections. You</p> <p>16 and I can get along fine. This isn't a huge fight. All I</p> <p>17 want to do is ask him what information he's referring to in</p> <p>18 this particular sentence. This sentence is a little over</p> <p>19 broad.</p> <p>20 MS. GOLDEN: First of all, you know, you have</p> <p>21 absolutely no identification of Orton cones in this case. I</p> <p>22 don't want to get into this. And don't interrupt me, but</p> <p>23 this is not a fight at all. I am simply trying to direct you</p> <p>24 in the right direction per our conversation prior to this</p> <p>25 deposition about the scope of this deposition.</p>	<p style="text-align: right;">61</p> <p>1 MR. HAMES: Q. Sir, what I'm asking you is a very</p> <p>2 specific question. I'm not referring to anything else that</p> <p>3 we've already talked about in your deposition.</p> <p>4 Paragraph 3, sentence number 1 --</p> <p>5 A. Um-hum.</p> <p>6 Q. -- of that particular paragraph you refer to</p> <p>7 information in the possession of Orton. That you have</p> <p>8 reviewed. Has all of that information been produced here</p> <p>9 today? Or -- in -- the conversations that you had with the</p> <p>10 three individuals? That you've already talked about?</p> <p>11 MS. GOLDEN: Okay.</p> <p>12 MR. HAMES: Q. Is there anything else?</p> <p>13 MS. GOLDEN: I'm going to object because that is</p> <p>14 outside the scope of the deposition notice.</p> <p>15 You are not entitled by any means, Scott, entitled</p> <p>16 to every single thing that he has looked at, and that is what</p> <p>17 you just asked him. You asked him if we produced everything</p> <p>18 that he has looked at.</p> <p>19 MR. HAMES: Catherine, let's go off the record and</p> <p>20 have this conversation.</p> <p>21 MS. GOLDEN: No, let's stay on the record. That's</p> <p>22 what you just asked him.</p> <p>23 MR. HAMES: So you're objecting and instructing him</p> <p>24 not to answer.</p> <p>25 MS. GOLDEN: I'm not instructing him not to answer</p>

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<p style="text-align: right;">62</p> <p>1 MR. HAMES: Okay, you can answer then.</p> <p>2 MS. GOLDEN: Would you read back the question</p> <p>3 please.</p> <p>4 (Record read.)</p> <p>5 MR. HAMES: Go ahead, you can answer, subject to</p> <p>6 your counsel's objections.</p> <p>7 MS. GOLDEN: Yeah, I'm going to object again, it's</p> <p>8 vague, it's ambiguous, it's over broad and it's asked and</p> <p>9 answered. He just told you that he reviewed all types of</p> <p>10 other documents. Boxes of checks. Okay?</p> <p>11 Obviously those are not here today.</p> <p>12 MR. HAMES: Q. Is there anything --</p> <p>13 MS. GOLDEN: You're trying to trap him. It's</p> <p>14 argumentative.</p> <p>15 MR. HAMES: It's a very simple question.</p> <p>16 MS. GOLDEN: No.</p> <p>17 MR. HAMES: Q. Subject to her objections, can you</p> <p>18 answer the question, please?</p> <p>19 MS. GOLDEN: Is everything here today that you</p> <p>20 looked at?</p> <p>21 MR. HAMES: Okay, Catherine, now, you --</p> <p>22 MS. GOLDEN: No, it's not. It's your question.</p> <p>23 MR. HAMES: This is incredibly inappropriate.</p> <p>24 MS. GOLDEN: Okay, read back the question again.</p> <p>25 MR. HAMES: No.</p>	<p style="text-align: right;">64</p> <p>1 your declaration, of paragraph 3, sentence number 1?</p> <p>2 MS. GOLDEN: That's been asked and answered and we</p> <p>3 were referenced -- he already referenced the other materials</p> <p>4 we produced.</p> <p>5 It's been asked and answered.</p> <p>6 MR. HAMES: That's the question that I was asking</p> <p>7 him.</p> <p>8 MS. GOLDEN: Yes, and he's asked and answered that</p> <p>9 because you've already asked it in another way.</p> <p>10 MR. HAMES: Are you going to instruct him not to</p> <p>11 answer that question?</p> <p>12 MS. GOLDEN: No, I'm not instructing him not to</p> <p>13 answer. I want you to move along and stop badgering him.</p> <p>14 Answer the question.</p> <p>15 THE WITNESS: No.</p> <p>16 MR. HAMES: Q. Okay. Thank you. Paragraph number</p> <p>17 4 on the second page of your declaration. It says prior to</p> <p>18 mid-1963 Orton pyrometric cones were not packaged in</p> <p>19 Vermiculite. Rather the cones were packaged in non-asbestos</p> <p>20 sawdust.</p> <p>21 Do you see that sentence?</p> <p>22 A. I do.</p> <p>23 Q. Okay. Let's -- let's take it sentence by sentence,</p> <p>24 actually, all right?</p> <p>25 So how is it that you know prior to -- to mid-1963</p>
<p style="text-align: right;">63</p> <p>1 MS. GOLDEN: No, I want him to read back the</p> <p>2 question again, because that's exactly what you asked him.</p> <p>3 Could you please read back the question again?</p> <p>4 (Record read.)</p> <p>5 MS. GOLDEN: That's exactly what you asked him.</p> <p>6 Answer the question.</p> <p>7 THE WITNESS: No.</p> <p>8 MR. HAMES: Q. Okay.</p> <p>9 I don't understand why that had to be so</p> <p>10 difficult.</p> <p>11 MS. GOLDEN: You are very, very confusing and</p> <p>12 you're confusing my witness. Clearly when he says he</p> <p>13 reviewed boxes of checks --</p> <p>14 MR. HAMES: I --</p> <p>15 MS. GOLDEN: -- when he says he reviewed boxes of</p> <p>16 checks, does this look like boxes of checks to you?</p> <p>17 MR. HAMES: We talked about that. No, other than</p> <p>18 the boxes of the checks and the ledger.</p> <p>19 MS. GOLDEN: That's not how you phrased that</p> <p>20 question.</p> <p>21 MR. HAMES: Okay, let me rephrase it. Okay, you</p> <p>22 answered it. Let me ask you another question.</p> <p>23 Q. Other than the boxes of checks and the ledger that</p> <p>24 you mentioned, is there any other information or documents</p> <p>25 that you're referring to in this one particular sentence in</p>	<p style="text-align: right;">65</p> <p>1 that Orton pyrometric cones were not packaged in Vermiculite?</p> <p>2 A. One, by reviewing all the checks.</p> <p>3 Q. Okay.</p> <p>4 A. Orton didn't purchase any Vermiculite. And two,</p> <p>5 talking with the gentlemen I've already referred to, Mr.</p> <p>6 Chase and Mr. Fronk.</p> <p>7 Q. Okay. And the date -- how did you arrive at the</p> <p>8 date of the mid- -- mid-1963?</p> <p>9 A. Based on this -- on the date of the check. The</p> <p>10 first check that was written to Zonolite.</p> <p>11 Q. And that's this first page right here that's been</p> <p>12 produced that actually has the exhibit sticker on it?</p> <p>13 A. Yes.</p> <p>14 MS. GOLDEN: I -- I -- I'm not sure that these are</p> <p>15 in the perfect date order. Okay?</p> <p>16 So --</p> <p>17 MR. HAMES: Oh.</p> <p>18 MS. GOLDEN: But I think they probably are.</p> <p>19 MR. HAMES: Q. Okay. So -- well, if this refreshes</p> <p>20 your recollection you can answer the question.</p> <p>21 This one's dated March 20th, 1963.</p> <p>22 A. Okay.</p> <p>23 Q. Is that the earliest check that you found --</p> <p>24 without having to dig through all these?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">66</p> <p>1 Q. Okay. And is there anything else other than this</p> <p>2 particular check that allows you to arrive at the date of</p> <p>3 when Orton first began purchasing Vermiculite?</p> <p>4 A. Well, the review of all the checks that were</p> <p>5 retained prior to that.</p> <p>6 Q. Okay.</p> <p>7 A. And not finding a check written to one of the</p> <p>8 Vermiculite suppliers. And also again conversation with two</p> <p>9 long-term employees.</p> <p>10 Q. Okay. And that kind of goes to the second half of</p> <p>11 this paragraph. That the cones were packaged in non-asbestos</p> <p>12 sawdust. How do you know that?</p> <p>13 A. Because they told --</p> <p>14 MS. GOLDEN: I'm going to object. He just -- you</p> <p>15 just asked it and he answered it.</p> <p>16 MR. HAMES: Q. Well, he -- go ahead. You can</p> <p>17 answer.</p> <p>18 MS. GOLDEN: Go ahead.</p> <p>19 THE WITNESS: Because I talked to those two</p> <p>20 gentlemen.</p> <p>21 MR. HAMES: Q. And you reviewed the checks?</p> <p>22 A. When I -- yeah, I did review the checks.</p> <p>23 Q. Let me ask this question, okay? Who was the</p> <p>24 supplier of the -- of the sawdust -- prior to 1963 -- that</p> <p>25 Orton was using to package the cones in?</p>	<p style="text-align: right;">68</p> <p>1 A. I don't know the name of the company. I do know it</p> <p>2 was a lumber yard in Columbus, but I don't know the name of</p> <p>3 it.</p> <p>4 Q. Do you know if there was more than one supplier of</p> <p>5 the sawdust to Orton at any time?</p> <p>6 A. I do not.</p> <p>7 Q. Okay. How do you know -- how do you know it was a</p> <p>8 lumber yard in Columbus?</p> <p>9 A. Because I was told by Mr. Chase.</p> <p>10 Q. Okay. Did you -- when you were reviewing the</p> <p>11 checks did you see the name of that -- without recalling it</p> <p>12 today, did you see the name of a lumber company on the</p> <p>13 checks?</p> <p>14 A. I don't recall, but we were not looking for that.</p> <p>15 Q. Okay.</p> <p>16 A. That was not -- that was -- I was never asked</p> <p>17 about.</p> <p>18 Q. Right, I understand. And it sounds like there's</p> <p>19 probably thousands and thousands of checks; is that right?</p> <p>20 A. You're right.</p> <p>21 Q. Boxes and boxes? Okay. All right.</p> <p>22 Have you ever seen a box of Orton cones packaged in</p> <p>23 sawdust?</p> <p>24 A. Not to my recollection.</p> <p>25 Q. And it was Mr. Chase that told you they were</p>
<p style="text-align: right;">67</p> <p>1 A. I don't know.</p> <p>2 Q. Who were the checks made out to?</p> <p>3 A. I don't know. Nobody ever asked me that question</p> <p>4 until now.</p> <p>5 Q. Okay. So when you were filtering through the</p> <p>6 checks for these three individual companies that you were</p> <p>7 asked to look for by the individuals that you referenced,</p> <p>8 were there other companies that -- were there other checks</p> <p>9 made out to other companies that you didn't include here</p> <p>10 today? Other than those three companies? In other words --</p> <p>11 there's more checks made out to other companies, correct?</p> <p>12 MS. GOLDEN: I'm going to object. This is over</p> <p>13 broad, this is vague.</p> <p>14 THE WITNESS: Every check we ever wrote.</p> <p>15 MS. GOLDEN: Come here.</p> <p>16 (Witness and attorney consult off the record.)</p> <p>17 MR. HAMES: Q. Okay. So --</p> <p>18 A. Can I go back?</p> <p>19 Q. Yes, absolutely, now that you've talked to your</p> <p>20 attorney.</p> <p>21 MS. GOLDEN: Yes, I spoke with him.</p> <p>22 MR. HAMES: Q. You can clarify something. That's</p> <p>23 fine.</p> <p>24 A. You asked me where they got the sawdust?</p> <p>25 Q. Yes. The name of the company.</p>	<p style="text-align: right;">69</p> <p>1 packaged in sawdust?</p> <p>2 A. And Mr. Fronk.</p> <p>3 Q. Okay. And let's just take those guys one at a</p> <p>4 time.</p> <p>5 A. Okay.</p> <p>6 Q. Mr. Chase, when did you have that conversation with</p> <p>7 him?</p> <p>8 A. This morning.</p> <p>9 Q. Okay. Can you just summarize your conversation,</p> <p>10 please?</p> <p>11 A. Basically I asked him when we stopped using</p> <p>12 sawdust. And where we got it.</p> <p>13 Q. Okay. Did he -- did he tell you the name of the</p> <p>14 company that -- the lumber company?</p> <p>15 A. No. He just told me it was a -- we got it from --</p> <p>16 I think his exact words were the lumber mill.</p> <p>17 Q. Okay. Do you have any way of knowing how he knows</p> <p>18 that? That -- let me just clarify. Do you know how Mr.</p> <p>19 Chase knows that Orton was using sawdust?</p> <p>20 MS. GOLDEN: Okay, I'm going to object. It calls</p> <p>21 for speculation. It's outside the scope of this notice. And</p> <p>22 the document request. And it's double hearsay.</p> <p>23 But go ahead.</p> <p>24 MR. HAMES: I agree, but that's what I'm asking</p> <p>25 him.</p>

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<p style="text-align: right;">70</p> <p>1 MS. GOLDEN: Go ahead. Well --</p> <p>2 THE WITNESS: Tell me again.</p> <p>3 MR. HAMES: Q. How -- do you know how Mr. Chase</p> <p>4 knows that the cones were packaged in sawdust?</p> <p>5 MS. GOLDEN: Same objections.</p> <p>6 THE WITNESS: He told me that he knew.</p> <p>7 MR. HAMES: Q. Right. I understand that. He told</p> <p>8 you that he knew. But did he tell you how he knew?</p> <p>9 A. Mr. Chase's mother was the production manager for</p> <p>10 like 40 years before he went to work there.</p> <p>11 Q. When --</p> <p>12 A. He --</p> <p>13 Q. Sorry?</p> <p>14 A. So -- she's no longer alive.</p> <p>15 Q. Okay. What was her name?</p> <p>16 A. Mrs. Chase. I don't know her first name.</p> <p>17 Q. Okay. That's fine. Do you know when she worked</p> <p>18 for Orton?</p> <p>19 A. The dates? No.</p> <p>20 Q. Okay. Do you know when Mr. Chase started working</p> <p>21 for Orton?</p> <p>22 A. Roughly 35 to 40 years ago. I don't know exactly.</p> <p>23 Q. Can you -- okay.</p> <p>24 Do you know if he was working for Orton in 1963?</p> <p>25 A. I do not believe he was.</p>	<p style="text-align: right;">72</p> <p>1 A. He is.</p> <p>2 Q. Do you know where he lives?</p> <p>3 A. Westerville.</p> <p>4 Q. Did you talk to him this morning?</p> <p>5 A. No, I did not.</p> <p>6 Q. Do you have his phone number?</p> <p>7 A. Not with me, no.</p> <p>8 Q. Okay. Is it something that you'd be able to</p> <p>9 obtain?</p> <p>10 A. If I were in my office.</p> <p>11 Q. Okay. And what did he tell you with regards to the</p> <p>12 pyrometric cones and their packaging?</p> <p>13 A. He told me that they started using Vermiculite in</p> <p>14 1963.</p> <p>15 Q. Okay. And your attorney's probably going to</p> <p>16 object, but I'm going to ask you essentially the same</p> <p>17 question with respect to Mr. Fronk.</p> <p>18 Do you know how it is that he knows that they</p> <p>19 didn't start using Vermiculite until 1963?</p> <p>20 MS. GOLDEN: Same objections I made before. It</p> <p>21 calls for speculation. It calls for hearsay. And it lacks</p> <p>22 foundation.</p> <p>23 Do you know how he knows?</p> <p>24 THE WITNESS: Yeah. I do.</p> <p>25 MR. HAMES: Q. Okay. How does he know?</p>
<p style="text-align: right;">71</p> <p>1 Q. Okay. Do you know if he worked for Orton prior to</p> <p>2 1970?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Do you know if he worked for Orton when they</p> <p>5 were still using sawdust as the packaging material for the</p> <p>6 cones?</p> <p>7 A. I'm not sure.</p> <p>8 Q. Okay. Where does he live?</p> <p>9 A. Gahana.</p> <p>10 Q. Okay. And he's still an employee, I think you</p> <p>11 said?</p> <p>12 A. Yes, he is.</p> <p>13 Q. Okay. All right. Did you talk to him about</p> <p>14 anything else this morning?</p> <p>15 A. No.</p> <p>16 Q. Okay. So it's your understanding that Mr. Chase's</p> <p>17 mom worked for Orton, and that she must have provided the</p> <p>18 information to him that they were using sawdust?</p> <p>19 A. I have no idea.</p> <p>20 MS. GOLDEN: Wait a minute. That misstates prior</p> <p>21 testimony and it calls for speculation.</p> <p>22 MR. HAMES: Q. If you know.</p> <p>23 A. I don't know.</p> <p>24 Q. Okay. You also spoke to Mr. Fronk who's retired,</p> <p>25 right?</p>	<p style="text-align: right;">73</p> <p>1 A. He was there.</p> <p>2 Q. When did he start working for Orton?</p> <p>3 A. I'm not exactly sure of the exact date.</p> <p>4 Q. Okay. Can you give me a rough estimate?</p> <p>5 A. Early '60's.</p> <p>6 Q. Do you know if he worked there prior to 1963?</p> <p>7 A. I would have to say that I'm assuming that he did.</p> <p>8 Because -- and I'm recalling a conversation I had back in</p> <p>9 2004. Not recently.</p> <p>10 Q. Okay.</p> <p>11 A. He did -- he was actually part of the decision</p> <p>12 making process.</p> <p>13 Q. Okay. And when you're referring to the decision</p> <p>14 making process are you talking about the decision to switch</p> <p>15 from Vermiculite -- or rather switch from sawdust to</p> <p>16 Vermiculite?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Let's talk about that a little bit.</p> <p>19 Do you know why that decision was made?</p> <p>20 A. I know what I was told. I was told that there were</p> <p>21 a couple of issues. One, no one makes sawdust as a product.</p> <p>22 It's a by-product. The reliability of supply was very</p> <p>23 suspect. They never knew if they'd have enough. And the</p> <p>24 other was it was a fire hazard.</p> <p>25 Q. Oh. Okay. Were there any other reasons that</p>

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<p style="text-align: right;">74</p> <p>1 you're aware of other than the one you just mentioned?</p> <p>2 A. I was not told any other reasons.</p> <p>3 Q. Okay. And so Mr. Chase was involved in that</p> <p>4 decision. Do you know anyone else that was?</p> <p>5 A. No, that wasn't what I said.</p> <p>6 MS. GOLDEN: I'm going to object that it misstates</p> <p>7 prior testimony.</p> <p>8 MR. HAMES: Q. Okay, I'm sorry, I must have</p> <p>9 misunderstood you, then.</p> <p>10 A. Mr. Fronk.</p> <p>11 Q. Mr. Fronk was involved in that decision. Okay.</p> <p>12 Do you know anyone else that was involved in that</p> <p>13 decision other than Mr. Fronk?</p> <p>14 A. I would assume that the general manager at that</p> <p>15 time would have been. It being such a small organization</p> <p>16 Nothing happens without the general manager's knowledge.</p> <p>17 Q. Okay. Do you know the names of any individuals</p> <p>18 that were involved in that decision?</p> <p>19 A. I know the name of the general manager at that</p> <p>20 time.</p> <p>21 Q. Who was it?</p> <p>22 A. Mike Vucavich.</p> <p>23 Q. Can you spell that one?</p> <p>24 A. No.</p> <p>25 Q. Can you just say it one more time?</p>	<p style="text-align: right;">76</p> <p>1 MR. HAMES: Q. Do you know if they were paying more</p> <p>2 for the Vermiculite than they were for the sawdust?</p> <p>3 A. I do not know.</p> <p>4 Q. Okay. Okay, other than these three companies that</p> <p>5 were supplying Vermiculite to Orton, do you know of anyone</p> <p>6 else that may have supplied Vermiculite to Orton at any time?</p> <p>7 MS. GOLDEN: I'm going to object. It's been asked</p> <p>8 and answered. Twice.</p> <p>9 MR. HAMES: Q. Go ahead, you can answer it.</p> <p>10 MS. GOLDEN: You can answer it one more time.</p> <p>11 THE WITNESS: I know of no one else.</p> <p>12 MR. HAMES: Q. Okay. Do you know where W.R.</p> <p>13 Grace's Vermiculite came from that was supplied to Orton?</p> <p>14 MS. GOLDEN: I'm going to object. This is beyond</p> <p>15 the scope of his knowledge.</p> <p>16 MR. HAMES: Q. Well, he can tell me if it is or if</p> <p>17 it isn't.</p> <p>18 MS. GOLDEN: Do you know where it came from?</p> <p>19 THE WITNESS: Do I know where it was exfoliated?</p> <p>20 MR. HAME: Q. Yeah, do you know exactly where on</p> <p>21 the earth it came from?</p> <p>22 MS. GOLDEN: Okay, I'm going to object. As -- it's</p> <p>23 vague and ambiguous, and over broad.</p> <p>24 MR. HAMES: Q. Go ahead. You can answer.</p> <p>25 MS. GOLDEN: When you say came from are you talking</p>
<p style="text-align: right;">75</p> <p>1 A. Vucavich.</p> <p>2 Q. With a V?</p> <p>3 A. V, yes.</p> <p>4 Q. Is Mike Vucavich still alive?</p> <p>5 A. I'm not sure.</p> <p>6 Q. Do you know where he was last living?</p> <p>7 A. In the Columbus area. Best of my knowledge.</p> <p>8 Q. Okay. Other than Mr. Vucavich and Mr. Fronk do you</p> <p>9 know of anyone else that may have been involved in the</p> <p>10 decision to switch from sawdust to Vermiculite?</p> <p>11 A. I do not, no.</p> <p>12 Q. So was Orton paying for the sawdust? Prior to '63?</p> <p>13 For the packaging?</p> <p>14 A. I assume they were. I don't know.</p> <p>15 Q. Okay. And why was Vermiculite chosen, if you know?</p> <p>16 A. I would only be speculating if I said why. I don't</p> <p>17 know why. One thing is it's not flammable.</p> <p>18 Q. Okay. Well, it just seems to me like sawdust would</p> <p>19 be a lot cheaper than Vermiculite, so now they're paying for</p> <p>20 Vermiculite. Do you know if they were paying more for the</p> <p>21 Vermiculite than they were to the sawdust?</p> <p>22 MS. GOLDEN: Okay, I'm going to object. Just</p> <p>23 please proceed by question and answer. I'm going to object</p> <p>24 to your preface. Whatever your opinions are doesn't really</p> <p>25 matter. So if you have a question, ask it.</p>	<p style="text-align: right;">77</p> <p>1 about where it was mined?</p> <p>2 MR. HAMES: Yes.</p> <p>3 MS. GOLDEN: Where it was exfoliated.</p> <p>4 MR. HAMES: Exactly. Where it was mined.</p> <p>5 MS. GOLDEN: Where it was mined, okay.</p> <p>6 THE WITNESS: I don't know.</p> <p>7 MR. HAMES: Q. Do you know how many mines W.R.</p> <p>8 Grace had?</p> <p>9 MS. GOLDEN: I'm going to object. That's outside</p> <p>10 his -- it's outside the notice and it's outside the scope of</p> <p>11 his knowledge.</p> <p>12 MR. HAMES: Q. I'm just asking if you know.</p> <p>13 MS. GOLDEN: Okay, it's outside the scope of the</p> <p>14 notice of the deposition. How many mines does W.R. Grace</p> <p>15 have?</p> <p>16 Did you -- does he ever know how many mines they</p> <p>17 had?</p> <p>18 MR. HAMES: I completely disagree. I want --</p> <p>19 Q. Go ahead and you can answer.</p> <p>20 MS. GOLDEN: You can answer.</p> <p>21 MR. HAMES: I don't want to drag this out any</p> <p>22 longer than we already have.</p> <p>23 THE WITNESS: I know of two.</p> <p>24 MR. HAMES: Q. Okay.</p> <p>25 A. That's all I know of.</p>

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<p style="text-align: right;">78</p> <p>1 Q. Let me ask you in particular. Do you know if any 2 of the Vermiculite ever supplied to Orton came from W.R. 3 Grace's Libby, Montana mine? 4 A. I do not know. 5 Q. What about the Zonolite Company's mine? Do you 6 know where the Zonolite Company's mine was? Vermiculite 7 mine? 8 A. Well, actually -- 9 MS. GOLDEN: Wait, wait a minute. I'm going to 10 object. It's vague and ambiguous and it's over broad as to 11 time. Are you talking about any time in the history of the 12 Zonolite company? 13 MR. HAMES: Let's say in 1963. 14 MS. GOLDEN: Okay. 15 THE WITNESS: I'm -- I'm going to have to speculate 16 here. 17 MS. GOLDEN: We don't want you to speculate. 18 THE WITNESS: Well, because I don't know. If I 19 can't speculate then I don't know. 20 MR. HAMES: Q. Okay. Okay. Are you aware -- let 21 me just ask you just for your background. Are you aware that 22 there's a Vermiculite mine in Libby, Montana where issues 23 pertaining to it being contaminated with asbestos have been 24 reported? 25 MS. GOLDEN: Okay, I'm going to object. I don't</p>	<p style="text-align: right;">80</p> <p>1 Where do you make that leap? 2 MR. HAMES: Can you hand me Exhibit number 1, 3 please? 4 (Pause.) 5 You're instructing him not to answer my question? 6 MS. GOLDEN: No, I didn't. 7 MR. HAMES: Q. Okay, you can answer. 8 MS. GOLDEN: You show me in your deposition notice 9 where he has to know anything -- what his personal knowledge 10 is. About Libby, Montana. 11 MR. HAMES: Are you instructing him not to answer 12 my question? 13 MS. GOLDEN: Where is the category? Yes, I'm going 14 to until you tell me what the category is. 15 MR. HAMES: I don't think there is a particular 16 category. The questions in the deposition are not limited 17 just to the categories. 18 MS. GOLDEN: Well, yes, they really are. Yes, they 19 are. And they're also supposed to be limited, Scott, to 20 where there is identification in the case. Of which there is 21 none. 22 MR. HAMES: I know your arguments for your motion 23 for summary judgment. 24 MS. GOLDEN: Of which there is none. 25 MR. HAMES: I know your arguments.</p>
<p style="text-align: right;">79</p> <p>1 see the relevance of that at all to this deposition. Or to 2 the notice. 3 Have you -- you're asking him if he's ever heard of 4 the Libby -- the whole Libby mess? 5 MR. HAMES: Yes. 6 MS. GOLDEN: I mean, come on. What does that have 7 to do with this case? 8 MR. HAMES: That's exactly what I'm asking him. 9 MS. GOLDEN: What does that have to do with this 10 case? 11 MR. HAMES: It's plaintiff's contention that some 12 of the Vermiculite supplied to Orton -- 13 MS. GOLDEN: Uh-huh. 14 MR. HAMES: -- came from that particular mine. 15 MS. GOLDEN: Uh-huh. 16 MR. HAMES: So I'm asking him for his foundation if 17 he's aware there's a Vermiculite mine there. 18 MS. GOLDEN: First of all, he doesn't even deal -- 19 MR. HAMES: I'm asking him. 20 MS. GOLDEN: First of all, you are assuming, you 21 are completely assuming -- first of all, he came in 2001. He 22 has nothing ever to do with ordering Vermiculite, and you're 23 assuming that what is in his brain about what he may have 24 read anywhere in the outside world about Libby Montana has 25 anything to do with this case.</p>	<p style="text-align: right;">81</p> <p>1 MS. GOLDEN: In fact maybe I should attach the 2 separate statement of facts from our motion for summary 3 judgment to the deposition, undisputed testimony from your 4 client. What is -- what he knows about Libby Montana has 5 absolutely no bearing or relevance in this case. 6 Now, if you want to ask him about one of your 7 categories that have to do with W.R. Grace, you can ask him 8 that. 9 MR. HAMES: Okay. Look. You're making this a lot 10 more difficult than it has to be. 11 MS. GOLDEN: You keep saying that, and the problem 12 is that your questions are not narrowed enough to the issues 13 in this case or the issues that you want him to testify to 14 pursuant to your deposition notice. 15 MR. HAMES: Q. Do you know if any of the 16 Vermiculite came from the Libby, Montana mine? Operated 17 either by the Zonolite Company or W.R. Grace? That Orton 18 used in the packaging of its cones? 19 A. I do not know. 20 Q. Do you know the location of any of the actual mines 21 where any of the Vermiculite came from that Orton used in the 22 packaging of its cones? 23 A. Yes. 24 Q. Okay. Where did it come from? 25 A. South Africa.</p>

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<p style="text-align: right;">82</p> <p>1 Q. How do you know that?</p> <p>2 A. Because that's where J.P. Austin imported the</p> <p>3 material from.</p> <p>4 Q. Okay. And how do you know that J.P. Austin got the</p> <p>5 Vermiculite from South Africa?</p> <p>6 A. I spoke with Jerry Austin.</p> <p>7 Q. Okay. And who's Jerry Austin?</p> <p>8 A. He's the principal of J.P. Austin.</p> <p>9 Q. And he's the one that told you that it came from</p> <p>10 South Africa?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know what years they got the Vermiculite</p> <p>13 from South Africa?</p> <p>14 A. His statement was to me we've always gotten it</p> <p>15 there and we still do.</p> <p>16 Q. Okay. Did he tell you if they got it anywhere else</p> <p>17 other than South Africa?</p> <p>18 A. That was the only place, he said.</p> <p>19 Q. Okay. All right.</p> <p>20 When did W.R. Grace supply Vermiculite -- well,</p> <p>21 let's take -- actually, let me back up. Let me withdraw that</p> <p>22 question.</p> <p>23 Do you know when the Zonolite Company supplied</p> <p>24 Vermiculite to Orton for use in the packaging of the</p> <p>25 pyrometric cones?</p>	<p style="text-align: right;">84</p> <p>1 MS. GOLDEN: I think what we need to do is we might</p> <p>2 as well take a lunch break. I have a copy of these. We can</p> <p>3 go through them.</p> <p>4 MR. HAMES: You sure you want to take a lunch</p> <p>5 break? We have to be at court at 2:00 o'clock.</p> <p>6 MS. GOLDEN: You have to be at court. I don't have</p> <p>7 to be at court. He doesn't have to be at court.</p> <p>8 MR. HAMES: Is it really going to take you that</p> <p>9 long, do you think?</p> <p>10 MS. GOLDEN: Well, we got to look through them.</p> <p>11 MR. HAMES: He may know without having to look</p> <p>12 through them.</p> <p>13 MS. GOLDEN: You just asked him and he said he</p> <p>14 doesn't.</p> <p>15 THE WITNESS: I can easily tell by looking.</p> <p>16 MR. HAMES: Q. How long do you think it's going to</p> <p>17 take you to look through them?</p> <p>18 A. I don't have a good estimate. 15 minutes.</p> <p>19 MR. HAMES: Why don't we just take 15 minutes.</p> <p>20 MS. GOLDEN: Listen to me. Do you know -- this is</p> <p>21 one of the things that I'm totally confused about, is checks</p> <p>22 written to W.R. Grace versus Zonolite. I have no idea when</p> <p>23 they changed their name. Do you know anything about that?</p> <p>24 THE WITNESS: No. The only thing I know is --</p> <p>25 MS. GOLDEN: You'll have to look at this, right?</p>
<p style="text-align: right;">83</p> <p>1 A. Yes.</p> <p>2 Q. Okay. What years was that?</p> <p>3 A. I'd have to look at the checks. The canceled</p> <p>4 checks.</p> <p>5 Q. That's fine. You can go ahead and look at those.</p> <p>6 MS. GOLDEN: Okay.</p> <p>7 MR. HAMES: Q. I don't want you to review all of</p> <p>8 them, but I'm talking about when they first started.</p> <p>9 MS. GOLDEN: Okay, wait a minute here. You've</p> <p>10 asked him two things, when they first started and what years</p> <p>11 they supplied it. For him to give you the years he's going</p> <p>12 to have to look at all of the checks. If you want him to do</p> <p>13 that that's fine, but we can take a break at least while he's</p> <p>14 doing that, okay?</p> <p>15 MR. HAMES: Okay, why don't we do that.</p> <p>16 Q. Okay. I would like you to look through -- before</p> <p>17 we go off the record, what I'm going to do is I'm going to</p> <p>18 ask you with respect to each one of those companies I want to</p> <p>19 know when they first started and when they stopped supplying</p> <p>20 the Vermiculite, so we have some time frame for who was</p> <p>21 supplying the Vermiculite to Orton, okay?</p> <p>22 MS. GOLDEN: Right. At the various times. When it</p> <p>23 will start, when it will stop, whenever it starts again.</p> <p>24 MR. HAMES: However you want to categorize it.</p> <p>25 It's really important.</p>	<p style="text-align: right;">85</p> <p>1 THE WITNESS: Have to look at the checks.</p> <p>2 MS. GOLDEN: Okay.</p> <p>3 THE WITNESS: It was either made out to Zonolite,</p> <p>4 W.R. Grace or Austin.</p> <p>5 MR. HAMES: Okay. I can probably save us some time</p> <p>6 then.</p> <p>7 MS. GOLDEN: Because I don't know when Zonolite</p> <p>8 changed to W.R. Grace. I don't know when they --</p> <p>9 MR. HAMES: Q. We can go through the checks just as</p> <p>10 well.</p> <p>11 A. Sure.</p> <p>12 Q. So other than the checks you don't know exactly</p> <p>13 when any of these three companies was supplying Vermiculite</p> <p>14 to Orton. Is that right?</p> <p>15 A. Other than my conversations with Mr. Fronk. And</p> <p>16 Mr. Chase.</p> <p>17 Q. Right. But they didn't tell you the exact years?</p> <p>18 A. Oh, no.</p> <p>19 Q. Okay. So in order to obtain that information, the</p> <p>20 best source of information is to look through the checks,</p> <p>21 figure out exactly when they were written --</p> <p>22 A. Um-hum.</p> <p>23 Q. -- the date on those checks and who they were made</p> <p>24 out to.</p> <p>25 A. That's right.</p>

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<p style="text-align: right;">86</p> <p>1 Q. As to who supplied the Vermiculite to Orton.</p> <p>2 A. Yes.</p> <p>3 Q. And when.</p> <p>4 A. Sure.</p> <p>5 Q. Okay. Do you know what the dates on the checks</p> <p>6 themselves represent? In other words, let's look at the</p> <p>7 first one as an example. Okay? This is dated March 20th,</p> <p>8 1963.</p> <p>9 A. Um-hum.</p> <p>10 Q. Do you know if they were paid -- and this is to the</p> <p>11 Zonolite Company.</p> <p>12 A. Um-hum.</p> <p>13 Q. Do you know if the Zonolite Company was paid when</p> <p>14 the Vermiculite was delivered? Or after some other point?</p> <p>15 A. Do I know -- no, I don't know specifically.</p> <p>16 Q. Okay. Do you know if, for example, it took any</p> <p>17 period of time for Orton to start including the Vermiculite</p> <p>18 for this particular check into the packaging?</p> <p>19 Like was there -- in other words, do you understand</p> <p>20 what I'm getting at? Like the Vermiculite, was it sitting</p> <p>21 around for a year before they stuck that particular</p> <p>22 Vermiculite into the package?</p> <p>23 A. Oh, I don't know that.</p> <p>24 Q. Okay. Do you know if Orton had some sort of</p> <p>25 warehouse or a room or something where they kept the</p>	<p style="text-align: right;">88</p> <p>1 record the time is 12:40.</p> <p>2 MR. HAMES: Q. Okay, I think we've exhausted the</p> <p>3 issues pertaining to the checks, so I'm not going to ask you</p> <p>4 any more questions about that right now.</p> <p>5 I want to talk about some of these other documents.</p> <p>6 The documents themselves all speak for themselves, but I just</p> <p>7 need to mark everything.</p> <p>8 So let's just grab this one right here that's dated</p> <p>9 October 8th, 1976. Can you identify what this is, please?</p> <p>10 A. Yeah. It's an analysis of the crude Vermiculite</p> <p>11 done by the Atlanta Testing and Engineering Company, and the</p> <p>12 material originated from the Palabora Mine in South Africa.</p> <p>13 Q. Okay. Was this testing done at the request of</p> <p>14 Orton?</p> <p>15 A. No.</p> <p>16 Q. Do you know how this testing went about? How it</p> <p>17 originated?</p> <p>18 MS. GOLDEN: You mean who requested it?</p> <p>19 MR. HAMES: Yeah.</p> <p>20 THE WITNESS: Well, based on the address that it</p> <p>21 was sent to, I would assume that American -- what is that --</p> <p>22 American Vermiculite?</p> <p>23 MR. HAMES: Q. Uh-huh.</p> <p>24 A. Requested it.</p> <p>25 Q. Okay. And I just got this before your deposition,</p>
<p style="text-align: right;">87</p> <p>1 Vermiculite?</p> <p>2 A. Yes, I -- well -- I'm not sure.</p> <p>3 Q. Okay.</p> <p>4 A. To be honest with you.</p> <p>5 Q. Do you know how the Vermiculite that was supplied</p> <p>6 by these various companies was packaged?</p> <p>7 A. Mr. Fronk told me it came in bags.</p> <p>8 Q. Okay. Do you know if the bags had the names of the</p> <p>9 suppliers on them?</p> <p>10 A. Oh, I don't know that.</p> <p>11 Q. Do you know if the bags were stacked somewhere at</p> <p>12 the -- at Orton?</p> <p>13 A. Do I know personally? No.</p> <p>14 Q. What I'm trying to figure out is how long would it</p> <p>15 take a particular bag to go into one of the boxes of cones?</p> <p>16 Do you know that?</p> <p>17 A. There's no way of me knowing that.</p> <p>18 MS. GOLDEN: Let's take a break.</p> <p>19 MR. HAMES: Okay.</p> <p>20 THE VIDEOGRAPHER: This marks the end of Tape 1 of</p> <p>21 Volume I of the deposition of Gary Childress. Going off the</p> <p>22 record the time is 12:24.</p> <p>23 (Brief recess taken.)</p> <p>24 THE VIDEOGRAPHER: This marks the start of Tape 2</p> <p>25 of Volume I, the deposition of Gary Childress. Going on the</p>	<p style="text-align: right;">89</p> <p>1 so I haven't read through everything, but do you know if --</p> <p>2 do you know if the American Vermiculite Corporation ever</p> <p>3 supplied Vermiculite to Orton?</p> <p>4 A. No, they supplied to J.P. Austin. They were the</p> <p>5 importer.</p> <p>6 Q. Oh, okay. That explains it.</p> <p>7 Was this document -- obviously it must have been</p> <p>8 provided to Orton at some time.</p> <p>9 A. It was.</p> <p>10 Q. Do you know when it was?</p> <p>11 A. The received date.</p> <p>12 Q. Okay, at the top. Will you just read it for the</p> <p>13 record?</p> <p>14 A. The received date stamped by Orton was December</p> <p>15 1st, it looks like 1978.</p> <p>16 Q. Okay. Why don't we go ahead and mark that next in</p> <p>17 order.</p> <p>18 (Whereupon Plaintiff's Exhibit 4 was marked for</p> <p>19 identification.)</p> <p>20 MR. HAMES: Q. Okay, and you produced this next</p> <p>21 document. Dated September 2nd, 1981. And essentially that's</p> <p>22 a request to -- who is it addressed to?</p> <p>23 A. W.R. Grace & Company.</p> <p>24 Q. For their material safety data sheets, right?</p> <p>25 A. That's correct.</p>

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<p style="text-align: right;">90</p> <p>1 Q. Okay. And is that Mr. Fronk that you were</p> <p>2 referring to throughout your deposition?</p> <p>3 A. The same.</p> <p>4 Q. Okay. Why don't we go ahead and mark that next in</p> <p>5 order.</p> <p>6 (Whereupon Plaintiff's Exhibit 5 was marked for</p> <p>7 identification.)</p> <p>8 MR. HAMES: Q. Do you know why that request was</p> <p>9 made?</p> <p>10 MS. GOLDEN: I'm going to object. It calls for</p> <p>11 hearsay -- I mean it calls for speculation.</p> <p>12 THE WITNESS: If the documents speak for</p> <p>13 themselves, read it.</p> <p>14 MR. HAMES: Q. Okay.</p> <p>15 MS. GOLDEN: He'll be a lawyer by the time --</p> <p>16 MR. O'SHEA: Picking up the lingo.</p> <p>17 MR. HAMES: Q. And then there was a -- let's see --</p> <p>18 MS. GOLDEN: You looking for the response from</p> <p>19 Grace?</p> <p>20 MR. HAMES: Yeah, exactly.</p> <p>21 MS. GOLDEN: That was attached to the document</p> <p>22 request.</p> <p>23 MR. HAMES: Right, okay.</p> <p>24 MS. GOLDEN: But I'm not quite sure if I provided</p> <p>25 it again or not.</p>	<p style="text-align: right;">92</p> <p>1 A. Vukovich -- that's how you spell it.</p> <p>2 Q. That's how you spell it. It's on there, right?</p> <p>3 A. Right.</p> <p>4 Q. Okay.</p> <p>5 A. Mr. Vukovich was the general manager at that time.</p> <p>6 Q. Okay. And then we also have a material safety data</p> <p>7 sheet from J.P. Austin.</p> <p>8 Wait, did we mark that one? Let's mark this. Just</p> <p>9 for the record, we're marking the September 1st, 1983 minutes</p> <p>10 as next in order.</p> <p>11 (Whereupon Plaintiff's Exhibit 7 was marked for</p> <p>12 identification.)</p> <p>13 MS. GOLDEN: That you already got with the document</p> <p>14 production.</p> <p>15 MR. HAMES: Yeah. You know, I don't think I marked</p> <p>16 it though, have I?</p> <p>17 MS. GOLDEN: No, I don't think you have. No, you</p> <p>18 haven't.</p> <p>19 MR. HAMES: Okay.</p> <p>20 Q. And the next document is the Material Safety Data</p> <p>21 Sheet from J.P. Austin; is that right?</p> <p>22 A. That's correct.</p> <p>23 Q. Okay. We'll just go ahead and mark that as next in</p> <p>24 order.</p> <p>25 (Whereupon Plaintiff's Exhibit 8 was marked for</p>
<p style="text-align: right;">91</p> <p>1 MR. HAMES: I have it.</p> <p>2 MS. GOLDEN: But I have it right here.</p> <p>3 MR. HAMES: I have it right here. I just ripped it</p> <p>4 off the top.</p> <p>5 MS. GOLDEN: Okay.</p> <p>6 MR. HAMES: Q. And then you received -- was that</p> <p>7 the response that you received from Grace? That Orton</p> <p>8 received from Grace from Exhibit number 5? The Fronk letter?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. So let's go ahead and mark that next in</p> <p>11 order.</p> <p>12 (Whereupon Plaintiff's Exhibit 6 was marked for</p> <p>13 identification.)</p> <p>14 MS. GOLDEN: And that includes the material safety</p> <p>15 data sheet from Grace.</p> <p>16 MR. HAMES: Right. And the cover letter.</p> <p>17 MS. GOLDEN: And the cover letter.</p> <p>18 MR. HAMES: Q. Okay. Can you -- this next document</p> <p>19 that's dated September 1st, 1983, can you just briefly</p> <p>20 describe what that is?</p> <p>21 A. It came out of the minutes of the annual board</p> <p>22 meeting.</p> <p>23 Q. And who's the author?</p> <p>24 A. The author is Bill Chase.</p> <p>25 Q. Okay. And Mr. Vukovich's name?</p>	<p style="text-align: right;">93</p> <p>1 identification.)</p> <p>2 MR. HAMES: Q. Okay, is that everything that</p> <p>3 we've -- that was produced today?</p> <p>4 MS. GOLDEN: Yeah.</p> <p>5 MR. HAMES: I just want to make sure I didn't leave</p> <p>6 anything out.</p> <p>7 MS. GOLDEN: You've got something laying over there</p> <p>8 with the sticker on it. I just want to make sure it gets</p> <p>9 back in the pile.</p> <p>10 MR. HAMES: Yeah, that's the depo notice.</p> <p>11 MS. GOLDEN: I've taken them home before.</p> <p>12 MR. HAMES: Oh --</p> <p>13 Can I keep this?</p> <p>14 MS. GOLDEN: I don't know what it is.</p> <p>15 MR. HAMES: The verifications.</p> <p>16 MS. GOLDEN: Yeah, it's for you.</p> <p>17 MR. HAMES: I don't know if we served --</p> <p>18 MS. GOLDEN: Yeah, I have extra copies of that.</p> <p>19 MR. HAMES: That saves us from having to mark all</p> <p>20 of the --</p> <p>21 MS. GOLDEN: Yeah, right.</p> <p>22 MR. HAMES: Q. So let me just ask you some</p> <p>23 questions. Have you ever heard -- or at some point did W.R.</p> <p>24 Grace send you information pertaining -- well, they did send</p> <p>25 you information pertaining to their Vermiculite being</p>

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<p style="text-align: right;">94</p> <p>1 contaminated with asbestos; is that right?</p> <p>2 A. No, actually, it's --</p> <p>3 MS. GOLDEN: I'm going to object. It misstates --</p> <p>4 it misstates what the document says, and it speaks for</p> <p>5 itself.</p> <p>6 MR. HAMES: Q. Well, do you have information, or</p> <p>7 did W.R. Grace ever inform Orton that any of the Vermiculite</p> <p>8 it supplied -- that it actually supplied to Orton was ever</p> <p>9 contaminated with asbestos?</p> <p>10 A. Asbestos?</p> <p>11 Q. Yes.</p> <p>12 A. I think it's -- that the MSDS says tremolite.</p> <p>13 Q. Okay. When was it that Orton first learned that --</p> <p>14 okay, let me back up.</p> <p>15 It's not totally responsive to my question.</p> <p>16 Do you know if any of the Vermiculite that was</p> <p>17 actually supplied to Orton by W.R. Grace was in fact</p> <p>18 contaminated with tremolite?</p> <p>19 A. No.</p> <p>20 Q. Okay. Is there any way for you to find out that</p> <p>21 you know of? Any documents or anyone you could talk to?</p> <p>22 Anything like that?</p> <p>23 A. If you can get W.R. Grace to produce their records.</p> <p>24 Lots of luck. I tried.</p> <p>25 Q. You did? Do you know if Orton has ever tested any</p>	<p style="text-align: right;">96</p> <p>1 the plant dirty, and they wanted to get it out of the plant</p> <p>2 because it was dirty.</p> <p>3 Q. Okay. Were there any concerns as far as you're</p> <p>4 aware that Orton had pertaining to any hazards associated</p> <p>5 with Vermiculite being contaminated with tremolite?</p> <p>6 A. There -- there's no records that I'm aware of.</p> <p>7 No.</p> <p>8 Q. Were there ever any like safety precautions given</p> <p>9 to Orton's own employees pertaining to their handling of</p> <p>10 Vermiculite that may be contaminated with tremolite?</p> <p>11 A. Not to my knowledge, no.</p> <p>12 Q. Were like the Orton employees required to wear any</p> <p>13 sort of breathing protection?</p> <p>14 MS. GOLDEN: At any time?</p> <p>15 MR. HAMES: Q. Well, let's say from '63 to '83.</p> <p>16 A. To the best of my knowledge they were never</p> <p>17 required to wear protection.</p> <p>18 Q. Okay. Do you know why the decision was made to</p> <p>19 switch from Vermiculite to the foam that they're using today?</p> <p>20 A. Other than what I just said, that -- in the minutes</p> <p>21 that said that it was dirty. It created a lot of dust and it</p> <p>22 made the plant dirty. And that's the only -- the only</p> <p>23 information that I've found referring to making the change at</p> <p>24 all.</p> <p>25 Q. Have you heard of any of Orton's former employees</p>
<p style="text-align: right;">95</p> <p>1 of the Vermiculite it used in its packaging for the presence</p> <p>2 of tremolite?</p> <p>3 A. Not to the best of my knowledge, no. There's no</p> <p>4 record for that.</p> <p>5 Q. Okay. Have you ever heard of -- or are you aware</p> <p>6 of J.P. Austin's Vermiculite ever being contaminated with</p> <p>7 tremolite?</p> <p>8 A. No, I've never heard of that.</p> <p>9 Q. And what about the Zonolite Company? Do you know</p> <p>10 if their Vermiculite was ever contaminated with tremolite?</p> <p>11 A. I don't know about Zonolite. We do not -- back in</p> <p>12 those days I don't even think there was such a thing as an</p> <p>13 MSDS.</p> <p>14 Q. Okay. After Orton received the MSDS from W.R.</p> <p>15 Grace pertaining to the tremolite -- and I think that was in</p> <p>16 1981; is that right?</p> <p>17 MS. GOLDEN: That's right. That's when it's dated.</p> <p>18 MR. HAMES: Yeah, I think it's dated --</p> <p>19 THE WITNESS: Yeah, September, I think.</p> <p>20 MR. HAMES: Q. Were there any discussions that</p> <p>21 you're aware of, were there any decisions made pertaining to</p> <p>22 whether or not they should continue using Vermiculite?</p> <p>23 A. The -- the only records that I found in document</p> <p>24 review was the exhibit from the board minutes. Where it</p> <p>25 referred to it as -- it was just nuisance dust, and it made</p>	<p style="text-align: right;">97</p> <p>1 ever developing an asbestos-related illness?</p> <p>2 A. No, I have not.</p> <p>3 Q. Are you aware of any Workers' Compensation claims</p> <p>4 or anything like that made against Orton by its own employees</p> <p>5 for exposure to asbestos?</p> <p>6 A. None to my knowledge. Certainly none in the time</p> <p>7 frame that I've been the general manager. I can speak</p> <p>8 specifically there, no, none during that time frame.</p> <p>9 Q. Okay. We've talked about a few people that worked</p> <p>10 for Orton. And Mr. Chase who still works there.</p> <p>11 A. Um-hum.</p> <p>12 Q. Can you tell me the names of anyone else that</p> <p>13 worked for Orton during the time period of 1963 and 1983 that</p> <p>14 you know is still alive?</p> <p>15 MS. GOLDEN: Other than the ones he's already told</p> <p>16 you about?</p> <p>17 MR. HAMES: Q. Yeah, other than the ones you've</p> <p>18 already mentioned.</p> <p>19 MS. GOLDEN: Okay.</p> <p>20 THE WITNESS: One other that I know.</p> <p>21 MR. HAMES: Q. Who's that?</p> <p>22 MS. GOLDEN: Now you can't remember his name?</p> <p>23 Sounds like me.</p> <p>24 THE WITNESS: His first name's Jim. Whitfield.</p> <p>25 MS. GOLDEN: There you go.</p>

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<p style="text-align: right;">98</p> <p>1 THE WITNESS: Took a minute to drag that one out.</p> <p>2 MR. HAMES: Q. Where does Jim Whitfield live?</p> <p>3 A. In Columbus.</p> <p>4 Q. Is he retired?</p> <p>5 A. Yes.</p> <p>6 Q. What was his position within Orton?</p> <p>7 A. He was a press operator.</p> <p>8 Q. Is that on the line where they were making the</p> <p>9 cones?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Because Orton makes other stuff that's not</p> <p>12 at issue in this case, right?</p> <p>13 A. Right.</p> <p>14 Q. Okay. And you know, I kind of limited that</p> <p>15 question.</p> <p>16 Let me just open it up. Do you know anyone else</p> <p>17 that's still alive that you haven't already mentioned that</p> <p>18 ever worked for Orton prior to 1983? Because I limited it to</p> <p>19 '63 to '83. Do you know anyone who might have worked there</p> <p>20 before '63, in other words, who's still alive?</p> <p>21 A. Other than the ones I've mentioned, no.</p> <p>22 Q. Your answer just confused me, so hold on a</p> <p>23 second. Correct me if I'm wrong, but are there -- I didn't</p> <p>24 think that there were any individuals that you knew of that</p> <p>25 worked there prior to 1963 that were still alive. Is that</p>	<p style="text-align: right;">100</p> <p>1 were they approached by -- I think Zonolite was the first</p> <p>2 one. Like a sales rep or something?</p> <p>3 MS. GOLDEN: You mean how they came to the</p> <p>4 decision --</p> <p>5 MR. HAMES: Yeah.</p> <p>6 MS. GOLDEN: -- to use Vermiculite as opposed to</p> <p>7 anything else.</p> <p>8 MR. HAMES: Q. As opposed to any other thing. We</p> <p>9 already talked about that sawdust was not as reliable and a</p> <p>10 fire hazard and stuff, but why -- why Vermiculite? If you</p> <p>11 know?</p> <p>12 A. I really don't know. I could make statements</p> <p>13 regarding the properties of Vermiculite that would make you</p> <p>14 want to use it.</p> <p>15 Q. Right.</p> <p>16 A. It's nice and spongy once it's exfoliated. It</p> <p>17 would be a good cushioning, packaging material. I don't</p> <p>18 think that -- I can't -- I can't tell you this for certain, I</p> <p>19 don't think we were -- that Orton was the only people who</p> <p>20 used it for packaging. There were other things probably</p> <p>21 packaged in Vermiculite.</p> <p>22 You probably know that better than I do. But it --</p> <p>23 it's a real spongy granule.</p> <p>24 MS. GOLDEN: Oh, he's seen it. They have a</p> <p>25 picture.</p>
<p style="text-align: right;">99</p> <p>1 right?</p> <p>2 A. Vukovich.</p> <p>3 Q. Oh, okay, Vukovich was. Do you know when he worked</p> <p>4 there? For Orton?</p> <p>5 A. I do not know when he started. No.</p> <p>6 Q. Do you know when he left?</p> <p>7 A. I don't know the exact time frame, but it was like</p> <p>8 1991, '92. Somewhere in that time frame.</p> <p>9 Q. What was his job title?</p> <p>10 A. General manager.</p> <p>11 Q. Okay, you don't know when he started but you're</p> <p>12 pretty sure that he started before 1963?</p> <p>13 A. Yeah.</p> <p>14 Q. Okay. Do you know if he worked there prior to</p> <p>15 1960?</p> <p>16 A. I don't know.</p> <p>17 Q. Okay.</p> <p>18 A. I'm not -- I just don't know when he started.</p> <p>19 Q. Okay. When was the last time you talked to him?</p> <p>20 A. Actually right after I came to work at Orton.</p> <p>21 Q. In 2001?</p> <p>22 A. 2001, 2002 time -- because I came at the end of</p> <p>23 2001. It might have actually been 2002.</p> <p>24 Q. Okay. Can you just, if you know, briefly tell me</p> <p>25 how it was that Orton started using Vermiculite? I mean,</p>	<p style="text-align: right;">101</p> <p>1 MR. HAMES: We have a box of it, actually.</p> <p>2 THE WITNESS: Okay. Well, you know what it looks</p> <p>3 like.</p> <p>4 MS. GOLDEN: I think what you're indicating, it was</p> <p>5 a common packaging material, it could very well have been a</p> <p>6 common packaging material.</p> <p>7 THE WITNESS: Um-hum.</p> <p>8 MR. HAMES: Right, okay.</p> <p>9 Q. Between -- okay. Another area that I'm kind of</p> <p>10 interested in is do you know who else manufactures pyrometric</p> <p>11 cones in the United States? Say who else was doing it in the</p> <p>12 1950's? Who else was making them?</p> <p>13 MS. GOLDEN: Just in the United States?</p> <p>14 MR. HAMES: Yeah, just in the United States.</p> <p>15 MS. GOLDEN: Oh.</p> <p>16 THE WITNESS: I don't know the date -- the dates</p> <p>17 when they started and stopped. But there was a company</p> <p>18 called Bell Ceramics.</p> <p>19 MR. HAMES: Q. Okay. Anyone else?</p> <p>20 A. In the United States? Not to my knowledge.</p> <p>21 Q. Let's open it up, because I don't think there's</p> <p>22 going to be that many manufacturers, but you tell me. Are</p> <p>23 there a whole bunch of manufacturers that make these</p> <p>24 pyrometric cones even today?</p> <p>25 A. No.</p>

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<p style="text-align: right;">102</p> <p>1 Q. Or have over the years?</p> <p>2 A. No.</p> <p>3 Q. Can you tell me the names of Orton's competitors</p> <p>4 that you're aware of that make the cones?</p> <p>5 A. Seager, S-e-a-g-e-r. That's in Germany.</p> <p>6 Q. Right.</p> <p>7 A. Seager was the first company that ever made</p> <p>8 pyrometric cones and General Orton actually went over and</p> <p>9 talked with Dr. Seager.</p> <p>10 Q. Right. Did they work together?</p> <p>11 A. I don't think they actually worked together. He</p> <p>12 went over and worked with Dr. Seager for a period of time and</p> <p>13 then brought that technology back to the United States.</p> <p>14 Q. And Dr. Seager was the person that invented them,</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. So General Orton worked with him and then developed</p> <p>18 his own company -- or started making them in the United</p> <p>19 States?</p> <p>20 A. Correct.</p> <p>21 Q. Other than Bell Ceramics and Seager are you aware</p> <p>22 of any other companies that have ever manufactured pyrometric</p> <p>23 cones?</p> <p>24 A. Yes. There's a company in Brazil. There's a</p> <p>25 company in Japan. And there's about -- there's either two or</p>	<p style="text-align: right;">104</p> <p>1 they're still in operation today.</p> <p>2 Q. Okay. Do you know any of the companies in China?</p> <p>3 You said there were two or three.</p> <p>4 A. I don't.</p> <p>5 Q. Do you know their names?</p> <p>6 A. I don't know, no.</p> <p>7 Q. Do you know when they started making pyrometric</p> <p>8 cones?</p> <p>9 A. No.</p> <p>10 Q. Do you know if they're still in business today?</p> <p>11 A. As far as I know they're still in business.</p> <p>12 Q. Do you know if they market their cones in the</p> <p>13 United States?</p> <p>14 A. I do not know.</p> <p>15 Q. Okay. Seager you mentioned is in Germany?</p> <p>16 A. Yeah. Yes.</p> <p>17 Q. When did they start actually manufacturing the</p> <p>18 cones?</p> <p>19 A. I don't know, but it would have been before</p> <p>20 1896. Since General Orton went there and started his company</p> <p>21 in 1896. So it had to be sometime before 1896.</p> <p>22 MS. GOLDEN: Well -- right.</p> <p>23 MR. HAMES: Q. Right.</p> <p>24 MS. GOLDEN: Just based on logic.</p> <p>25 MR. HAMES: Q. And are they still in operation</p>
<p style="text-align: right;">103</p> <p>1 three in China. Mainland China.</p> <p>2 Q. Okay. Any other ones?</p> <p>3 A. Those are the only ones I'm aware of.</p> <p>4 Q. Do you know the name of the company in Brazil?</p> <p>5 A. I can't recall it.</p> <p>6 Q. That's okay.</p> <p>7 MS. GOLDEN: That's all right.</p> <p>8 MR. HAMES: Q. If it comes to you let me know.</p> <p>9 A. All right.</p> <p>10 Q. Do you know when they were making pyrometric cones?</p> <p>11 When they were in business?</p> <p>12 A. As far as I know they're still in business, but I</p> <p>13 do not know when they started.</p> <p>14 Q. Okay. Do you know if they market cones in the</p> <p>15 United States?</p> <p>16 A. I do not know.</p> <p>17 Q. Okay. Do you know the name of the company in</p> <p>18 Japan?</p> <p>19 A. No. I don't remember the name of that company.</p> <p>20 Q. Same question. Do you know if they marketed cones</p> <p>21 in the United States?</p> <p>22 A. I'm not sure whether they do or not.</p> <p>23 Q. And do you know when they were in operation and</p> <p>24 when they were making them?</p> <p>25 A. I don't know when they started, but I believe</p>	<p style="text-align: right;">105</p> <p>1 today?</p> <p>2 A. No, they are not.</p> <p>3 Q. When did they go out of business?</p> <p>4 A. Two or three years ago.</p> <p>5 Q. Okay. Do you know how long -- were they making</p> <p>6 pyrometric cones up to the time that they went out of</p> <p>7 business two or three years ago?</p> <p>8 A. Except for a period during World War II when the</p> <p>9 factory got bombed.</p> <p>10 Q. Where was their factory?</p> <p>11 A. In Germany.</p> <p>12 Q. Do you know where?</p> <p>13 A. I don't know what town, but they were bombed out of</p> <p>14 business.</p> <p>15 Q. Yeah.</p> <p>16 MS. GOLDEN: I hope no one was killed.</p> <p>17 MR. HAMES: Yeah, no kidding.</p> <p>18 MS. GOLDEN: They probably were.</p> <p>19 MR. HAMES: Yeah.</p> <p>20 Q. Bell Ceramics, do you know when they started doing</p> <p>21 business?</p> <p>22 A. I'm not sure when they started making cones.</p> <p>23 Q. Do you know if they're still in business today?</p> <p>24 A. They're not. However, they stopped making cones</p> <p>25 before they stopped selling cones.</p>

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<p style="text-align: right;">106</p> <p>1 Q. Do you know when they stopped selling them?</p> <p>2 A. No, not exactly. No, I don't. Not exactly.</p> <p>3 Q. Okay. So on Bell you don't know when they started</p> <p>4 and you don't know when they stopped?</p> <p>5 A. No, I don't have the dates.</p> <p>6 Q. Do you know where they were located?</p> <p>7 A. I think they had offices in Florida, but I don't</p> <p>8 know if that's where they actually made the cones. They also</p> <p>9 had offices in Tennessee and I think West Virginia or Ohio.</p> <p>10 Over near the river. So it could have been on either side of</p> <p>11 the river. I'm not sure exactly where. But I'm not sure</p> <p>12 where they made them. Which location. They had -- I know</p> <p>13 they had different locations that -- and that wasn't the only</p> <p>14 thing they did. That wasn't their sole business.</p> <p>15 Q. Okay. And so are they the only company you're</p> <p>16 aware of that was in the United States that sold pyrometric</p> <p>17 cones at any time other than your company?</p> <p>18 MS. GOLDEN: That made them?</p> <p>19 MR. HAMES: Q. That made them and sold them in the</p> <p>20 United States?</p> <p>21 A. They were the only one that I'm aware of that made</p> <p>22 them in the United States.</p> <p>23 MS. GOLDEN: I -- okay, I have a -- an objection.</p> <p>24 Because it lacks foundation and assumes facts not in</p> <p>25 evidence.</p>	<p style="text-align: right;">108</p> <p>1 their business?</p> <p>2 A. You mean legal issues?</p> <p>3 Q. Yeah. Or just, you know, it's their product.</p> <p>4 Orton essentially created these things in the United States</p> <p>5 and then they have Bell Ceramics right there in Ohio also as</p> <p>6 their competitor. Was there any relationship at all either</p> <p>7 hostile or friendly between those companies?</p> <p>8 A. Yeah.</p> <p>9 MS. GOLDEN: I'm going to object. First of all I</p> <p>10 don't know what this has to do with anything in this case.</p> <p>11 It's beyond the scope of the depo notice, and it calls for</p> <p>12 speculation. It's vague -- it's over broad and it lacks</p> <p>13 foundation.</p> <p>14 MR. HAMES: Q. Go ahead, you can answer that.</p> <p>15 MS. GOLDEN: Go ahead.</p> <p>16 THE WITNESS: Yeah. Bell Ceramics had a problem</p> <p>17 with Orton.</p> <p>18 MR. HAMES: Q. And why was that, do you know?</p> <p>19 A. Because we were a not for profit foundation and on</p> <p>20 the side of every one of their boxes they put, "We are a tax</p> <p>21 paying organization." Since we were a not for profit, a</p> <p>22 501C-3, we were not a tax paying organization.</p> <p>23 Q. Do you know any people that worked for Bell</p> <p>24 Ceramics?</p> <p>25 A. I only know Dick Bell.</p>
<p style="text-align: right;">107</p> <p>1 MR. HAMES: Q. It's kind of a two part question, so</p> <p>2 let me just back up. All right?</p> <p>3 Other than Bell Ceramics and Orton, are you aware</p> <p>4 of any other companies that actually manufactured pyrometric</p> <p>5 cones in the United States?</p> <p>6 A. No.</p> <p>7 Q. And other than those two companies, Orton and Bell</p> <p>8 Ceramics, are you aware of any other companies that sold</p> <p>9 pyrometric cones in the United States? At any time?</p> <p>10 A. I'm --</p> <p>11 MS. GOLDEN: Now we're talking worldwide here,</p> <p>12 okay? That sold to the United States.</p> <p>13 THE WITNESS: I don't know if they sold to the</p> <p>14 United States or not.</p> <p>15 MR. HAMES: Q. Okay. So your answer is you don't</p> <p>16 know other than those two companies?</p> <p>17 A. I'm not sure if they did or not.</p> <p>18 Q. Okay. So did Orton -- did they ever have any</p> <p>19 lawsuits or patent infringement problems or anything like</p> <p>20 that with Bell Ceramics?</p> <p>21 A. There is no patent.</p> <p>22 Q. There's no patent on the product?</p> <p>23 A. Um-um.</p> <p>24 Q. Were they ever involved in any sort of litigation</p> <p>25 or have any sort of problems with Bell Ceramics moving in on</p>	<p style="text-align: right;">109</p> <p>1 Q. He's the owner?</p> <p>2 A. He was the owner.</p> <p>3 Q. Is he still alive?</p> <p>4 A. Oh, no.</p> <p>5 Q. Do you know when he passed away?</p> <p>6 MS. GOLDEN: Decade?</p> <p>7 THE WITNESS: Oh. At least ten years ago.</p> <p>8 MR. HAMES: Q. Okay, how did -- if you know -- do</p> <p>9 you know how Bell Ceramics packaged their pyrometric cones?</p> <p>10 A. I really do not know. I've actually not seen a</p> <p>11 package of theirs.</p> <p>12 Q. Have you ever seen an actual Bell Ceramic cone?</p> <p>13 A. Actually, we might have one on the board at Orton.</p> <p>14 Q. Does it look different than Orton's cones?</p> <p>15 A. No.</p> <p>16 Q. Are they indistinguishable as far as you know?</p> <p>17 Other than it being like on a board? Are there any marks,</p> <p>18 writings, logos on them?</p> <p>19 A. Nothing that I recall.</p> <p>20 Q. Okay.</p> <p>21 A. You'd have to go back to Seager, the formulas, and</p> <p>22 how they work. It's on the Internet. If you want to make</p> <p>23 cones -- be my guest.</p> <p>24 Q. You can figure it out. Right?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">110</p> <p>1 Q. You know, why don't we just go ahead and mark one 2 of these photos that we have -- we had a guy that actually 3 had a box of cones. He wasn't 100 percent sure when they 4 came from -- what time period. 5 And here's a photograph of it. 6 A. Um-hum. 7 MS. GOLDEN: Okay. Now, is this the photograph 8 that was previously -- it's been previously marked to Mr. 9 Rosen's depo? 10 MR. HAMES: Yes. Actually -- you know what? I'm 11 not 100 percent sure it's the exact same one. 12 MS. GOLDEN: Well, how many photographs do you have 13 of this Orton box? 14 MR. HAMES: I think we have two different ones. 15 MS. GOLDEN: Two photos? 16 MR. HAMES: And that one doesn't have an exhibit 17 sticker on it. 18 MS. GOLDEN: No. That's why I was asking. I just 19 want to make sure that we have all the photos of this box. 20 MR. HAMES: I think that there's two of them. 21 There's two kind of different angles on this. 22 Anyway. 23 MS. GOLDEN: Let me see these. 24 MR. HAMES: I think that this one is identical. 25 MS. GOLDEN: This is a photocopy.</p>	<p style="text-align: right;">112</p> <p>1 A. As far as I know, since the foundation was in 2 place. 3 Q. Okay. And you see the writing on there where it 4 says -- let's just look at the name where it says Orton 5 cones. 6 A. Orton standard pyrometric cones? 7 Q. Yes. 8 A. Yes. 9 Q. Is that on every single box that's been produced by 10 Orton as far as you know? 11 A. As far as I know. 12 Q. Has the writing or the appearance of that ever 13 changed? 14 Let me just ask you about the whole box. 15 A. Okay. 16 Q. So we don't have to pick through it. 17 MS. GOLDEN: Go ahead. 18 MR. HAMES: Q. For the entire box, has the 19 appearance of the packaging of the cones ever changed over 20 time that you're aware of? 21 A. Not that I'm aware of. Orton is a fairly small 22 organization, as you've already determined. And we didn't 23 use four color ink and cool things like that. It was pretty 24 I guess utilitarian. 25 Q. Okay.</p>
<p style="text-align: right;">111</p> <p>1 MR. HAMES: Oh, this one's a little bit different. 2 MS. GOLDEN: Yeah, I can tell. 3 MR. HAMES: See, the back's different. The angle 4 is different. Let's just mark the clean one. 5 MS. GOLDEN: Okay, because this one looks like an 6 original. Is that what you want to mark? 7 MR. HAMES: Yeah, I just want to ask him some 8 questions about it. 9 MS. GOLDEN: Okay, all right. 10 MR. HAMES: Q. Well, you raise a good point. Well 11 mark a copy. I have a color copy. 12 Take a look at that. 13 Okay. All I want to do is talk to you a little bit 14 about what's written on the boxes and stuff. 15 A. Um-hum. 16 Q. So is that the logo, the O with the, looks like 17 almost like a flag pole with a triangle sticking off to the 18 right? 19 A. Like a golf mark? 20 Q. Yeah. 21 A. Yeah, that's it. 22 Q. Like a flag on a putting green or something? 23 A. Yeah. 24 Q. How long has that logo been used for Orton, if you 25 know?</p>	<p style="text-align: right;">113</p> <p>1 A. The way the boxes were printed. 2 Q. This one has an address on it of 1445 Summit 3 Street? Columbus Ohio? 4 A. Yes. 5 Q. We talked about that address. That's where they 6 were at one point? 7 A. That's correct. 8 Q. Okay. So -- I can't remember what you said about 9 that. Let me look at my notes. 10 MS. GOLDEN: He didn't recall when they moved. If 11 that's what you're trying to find out. You can tell -- if 12 you want me to short circuit this. 13 MR. HAMES: Yeah. 14 MS. GOLDEN: If you look at the checks, the address 15 on the checks changes in about '79. 16 MR. HAMES: Okay. 17 MS. GOLDEN: Okay? 18 MR. HAMES: Q. So, all right. Based on your 19 counsel's representation about that, then we would know that 20 this box must be older than either 1979 or earlier, is that 21 right? 22 A. It would be older than '79 or '80. That was the 23 time frame that we moved. 24 Q. At the moment that they moved did they switch the 25 addresses on the boxes?</p>

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<p style="text-align: right;">114</p> <p>1 A. The typical way you can run a business is you would</p> <p>2 use up your inventory.</p> <p>3 Q. Do you have any idea how long that took?</p> <p>4 A. Knowing how we guard our -- our funds, it wouldn't</p> <p>5 take very long, because we wouldn't have a lot of inventory.</p> <p>6 Q. Okay. How many boxes of Orton cones does Orton</p> <p>7 sell like on a daily basis, or an annual basis, if you know?</p> <p>8 MS. GOLDEN: You're talking about any type of cone,</p> <p>9 right?</p> <p>10 MR. HAMES: Q. Yeah, either the shut off ones or</p> <p>11 the witness ones.</p> <p>12 MS. GOLDEN: Okay.</p> <p>13 MR. HAMES: Q. The various sizes.</p> <p>14 MS. GOLDEN: You're talking about now.</p> <p>15 THE WITNESS: What time frame? Today?</p> <p>16 MR. HAMES: Q. Like right now.</p> <p>17 A. Today?</p> <p>18 Q. Yeah.</p> <p>19 MS. GOLDEN: Boxes. I don't know how many boxes</p> <p>20 are in a batch.</p> <p>21 THE WITNESS: How many boxes we sell in a year?</p> <p>22 MS. GOLDEN: That's what his question was.</p> <p>23 THE WITNESS: I can actually probably tell you how</p> <p>24 many cones we sell in a year easier, because it depends on</p> <p>25 whether this is a box of 50 or a box of 25. You know.</p>	<p style="text-align: right;">116</p> <p>1 Q. Or on the box?</p> <p>2 A. Or on the box. I'm not aware of how to use them,</p> <p>3 necessarily.</p> <p>4 Q. Okay. Do you know if at any time Orton ever put</p> <p>5 any warnings on any of their boxes pertaining to any</p> <p>6 potential hazards from tremolite? Or asbestos?</p> <p>7 MS. GOLDEN: Okay, I'm going to -- I'm going to</p> <p>8 object, because that lacks foundation and assumes facts not</p> <p>9 in evidence.</p> <p>10 You can answer it, though.</p> <p>11 THE WITNESS: Okay. I'm not aware of anyone, no.</p> <p>12 MR. HAMES: Q. I can't remember if I asked you this</p> <p>13 question, and it's really important. Do you know if Orton</p> <p>14 ever tested any of the Vermiculite that they used?</p> <p>15 A. You did ask me.</p> <p>16 Q. I'm sorry. What was your answer?</p> <p>17 MS. GOLDEN: You can answer again.</p> <p>18 THE WITNESS: The answer is still the same. No, we</p> <p>19 did not.</p> <p>20 MR. HAMES: Q. Okay, but you were supplied some</p> <p>21 information of other people -- other companies that had</p> <p>22 tested Vermiculite that Orton was using? Is that right?</p> <p>23 A. Yeah. We saw an engineering report from the</p> <p>24 Atlanta Testing and Engineering Lab on the South African</p> <p>25 Vermiculite. And then we had an MSDS from both them and W.R.</p>
<p style="text-align: right;">115</p> <p>1 MR. HAMES: Q. Right.</p> <p>2 A. We talked about supporting being 25.</p> <p>3 We do about in excess of 12 million cones a year.</p> <p>4 MR. HAMES: Q. Okay. Has that number increased or</p> <p>5 decreased over time?</p> <p>6 A. Decreased.</p> <p>7 Q. Just generally.</p> <p>8 A. Decreased.</p> <p>9 Q. It has? Was there a peak at some point?</p> <p>10 A. Yeah. There was. I can't tell you exactly which</p> <p>11 year. It was probably late '80's -- or excuse me -- late</p> <p>12 '70's, early '80's.</p> <p>13 Q. Okay. What about just the color of the box? Has</p> <p>14 that changed at all over time that you know of?</p> <p>15 A. As far as I know, it has always been a white box --</p> <p>16 or an off white. Just primarily, because otherwise the</p> <p>17 printing doesn't show up on it very well. If you use just a</p> <p>18 cardboard colored box. So since we don't put a label, we</p> <p>19 actually print the box, it's always been either white or off</p> <p>20 white, I think.</p> <p>21 Q. Do you know if Orton ever -- if they ever included</p> <p>22 any instructions on how to use the cones on their boxes? Or</p> <p>23 within their boxes? Like if there was a pamphlet or</p> <p>24 something like that?</p> <p>25 A. I'm not aware of it in the box, no.</p>	<p style="text-align: right;">117</p> <p>1 Grace.</p> <p>2 MR. HAMES: Q. Did you ever see any similar</p> <p>3 engineering report from any of W.R. Grace's or the Zonolite</p> <p>4 Company's Vermiculite?</p> <p>5 A. No.</p> <p>6 MS. GOLDEN: They were trying to hide everything,</p> <p>7 as everybody knows.</p> <p>8 MR. HAMES: Q. Okay. I think I'm almost done, or I</p> <p>9 think I might be done, so why don't I just take a minute --</p> <p>10 you guys, why don't we take a break and I'll look through my</p> <p>11 notes.</p> <p>12 MS. GOLDEN: Okay.</p> <p>13 THE VIDEOGRAPHER: Going off the record, the time</p> <p>14 is 1:18.</p> <p>15 (Brief recess taken.)</p> <p>16 THE VIDEOGRAPHER: Back on the record. The time is</p> <p>17 1:24.</p> <p>18 MR. HAMES: Q. I just wanted to ask you a little</p> <p>19 bit about with respect to the cones that they were selling</p> <p>20 that were packaged in Vermiculite starting in 1963. Was</p> <p>21 there any geographic limitation as to where they were sold?</p> <p>22 A. No.</p> <p>23 Q. That you know of?</p> <p>24 A. No.</p> <p>25 Q. Okay. And then off the record we talked a little</p>

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<p style="text-align: right;">118</p> <p>1 bit about how much Vermiculite Orton was using. Is there any</p> <p>2 way for you to quantify that over the years? Or how many</p> <p>3 bags during a week or a month or anything like that?</p> <p>4 A. Not unless you could go back and find the -- the</p> <p>5 cost per bag and then look at the checks, you could figure</p> <p>6 out how many bags each check paid for and the frequency with</p> <p>7 which the checks were written.</p> <p>8 Q. Okay. And you don't know how much that would be?</p> <p>9 A. No.</p> <p>10 Q. Cost per bag?</p> <p>11 A. No.</p> <p>12 Q. Okay. Do you have any sort of understanding as to</p> <p>13 how often Orton ordered Vermiculite over the years?</p> <p>14 A. Yeah. It's very obvious in the checks. That --</p> <p>15 basically when you receive an order of anything when the</p> <p>16 material is received the clock starts running on most people</p> <p>17 have net 30 days as your payment terms. Orton's always paid</p> <p>18 their bills on time, so they would have paid within 30 days</p> <p>19 of the receipt of the material. And so they would order,</p> <p>20 obviously, before they ran out. But hopefully in time not to</p> <p>21 have a lot of inventory, because that just ties up money.</p> <p>22 And Orton is a -- is a foundation, and we do not work on a</p> <p>23 revolver like most businesses do where you use a revolver to</p> <p>24 cover your payments. We work out of a cash box.</p> <p>25 So -- our cash box isn't that big. So we have to</p>	<p style="text-align: right;">120</p> <p>1 Okay, we had two people in this room.</p> <p>2 MR. HAMES: Q. How much does a box of Orton cones</p> <p>3 cost, by the way?</p> <p>4 A. Today?</p> <p>5 Q. Yeah.</p> <p>6 A. It's about 6 bucks.</p> <p>7 Q. Okay.</p> <p>8 MS. GOLDEN: For 100, or --</p> <p>9 THE WITNESS: 50.</p> <p>10 MS. GOLDEN: I mean for 50?</p> <p>11 THE WITNESS: 50, yeah.</p> <p>12 MR. HAMES: Q. Okay.</p> <p>13 A. Used to be a lot less.</p> <p>14 I should quantify that. That's six bucks retail.</p> <p>15 Q. Right.</p> <p>16 A. The distributors get 40 percent off of that.</p> <p>17 Q. Okay. I think that those are all the questions</p> <p>18 that I have.</p> <p>19 You guys have anything to clarify for the record or</p> <p>20 anything like that?</p> <p>21 Okay. I really appreciate you coming all the way</p> <p>22 out so that I could take your deposition.</p> <p>23 A. Okay. You're welcome.</p> <p>24 Q. It's been very helpful.</p> <p>25 (Whereupon Plaintiff's Exhibit 9 was marked for</p>
<p style="text-align: right;">119</p> <p>1 pay for things when we get them, and General -- when you work</p> <p>2 for the Orton Foundation you feel some responsibility to</p> <p>3 General Orton and his reputation in the community.</p> <p>4 Q. Okay. How much does -- do you -- let me ask you</p> <p>5 this.</p> <p>6 Are there particular distributors that Orton has</p> <p>7 used over the years to sell their -- their cones?</p> <p>8 A. Basically we do not have distributors by</p> <p>9 territories. To be a distributor all you have to do is order</p> <p>10 a minimum quantity of cones and you're a distributor.</p> <p>11 So some of them I'm sure we've had for years. They</p> <p>12 come and go. You know, the hobby ceramics business kind of</p> <p>13 peaked in the early '80's and started down. It's been on a</p> <p>14 pretty much a spiral since then.</p> <p>15 So these people come and go. They're mostly, I</p> <p>16 guess you would refer to them as mom and pop stores. They're</p> <p>17 not big corporations. We're talking about a very niche</p> <p>18 market. Probably before this all came up you had no idea</p> <p>19 what a pyrometric cone was.</p> <p>20 Q. You're right.</p> <p>21 A. And probably no one else in this room except me</p> <p>22 did.</p> <p>23 MS. GOLDEN: I did.</p> <p>24 THE WITNESS: Before this? Oh, that's right. You</p> <p>25 used them.</p>	<p style="text-align: right;">121</p> <p>1 identification.)</p> <p>2 THE VIDEOGRAPHER: This concludes the deposition of</p> <p>3 Gary Childress. Two original videotapes will be retained at</p> <p>4 Tooker & Antz, 350 Sansome Street, Suite 700, San Francisco,</p> <p>5 California 94104, 415-392-0650. Going off the record, the</p> <p>6 time is 1:29.</p> <p>7 (Whereupon the deposition of Gary Childress was</p> <p>8 concluded at 1:29 p.m.)</p> <p>9</p> <p>10 _____</p> <p>11 GARY CHILDRESS</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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